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September 10, 2012

232947

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Proceedings
September 10, 2012
Part of
Public Record

RE: Diana Del Grosso, et al - Petition for Declaratory Order
Finance Docket No.: 35652

Dear Sir/Madam:

Enclosed please find the Response of Petitioners and Petitioners' Opposition to the Dana Companies Motion to Dismiss. These documents have already been filed today by electronic filing. Kindly docket and file same.

If you have any questions or require any other information, please let me know.

Very truly yours,



Mark Bobrowski

cc: Atty. Howard
Atty. Hocky
Upton Development Group
First Colony Development Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO.: 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

CERTIFICATE OF SERVICE

I, Mark Bobrowski, attorney for the Petitioners, hereby certify that I served a copy of Petitioners' Response with all Exhibits and Petitioners' Opposition to Motion to Dismiss to the following entities, by email through counsel, and by first class mail, postage prepaid:

First Colony Development Company, Inc.
929 Boston Post Road East
Marlborough, MA 01752

Grafton and Upton Railroad
50 Westboro Road
North Grafton, MA 01536

The Dana Companies
210 Essex Avenue East
Avenel, NJ 07001

Upton Development Group
31 Whitewood Road
Milford MA 01757

James E. Howard, Esquire
70 Rancho Road
Carmel Valley, CA 93924

Eric M. Hocky, Esquire
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

DATE: September 10, 2012

A handwritten signature in black ink, appearing to read 'Mark Bobrowski', written over a horizontal line.

Mark Bobrowski

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RESPONSE OF THE PETITIONERS

Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Attorney for Complainants

Date: September 10, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**PETITION OF DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH, KATHLEEN KELLEY, ANDREW WIKKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

RESPONSE OF THE PETITIONERS

Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wiklund, and Richard Kosiba (the “Complainants”), by counsel, hereby submit the following Response to the Reply in Opposition of the Grafton & Upton Railroad Company (the “G&U”) to the Surface Transportation Board (the “Board”).

I. THE PETITIONERS HAVE STANDING.

The G&U claims, at page 13 of its Reply, that the petitioners lack standing to file the Petition for Declaratory Order.¹ This argument is without merit.

As the Affidavits of all Petitioners (See Exhibits 1-7) demonstrate, the development of the G&U yard has resulted in numerous violations of the Upton Zoning By-law. Unless the G&U’s buildings and operations are exempt under 49 U.S.C. §10501(b), the G&U can be

¹ The G&U makes a frivolous argument that the Petitioners are seeking only to vindicate the rights of the inattentive Town of Upton. This argument was offered only in the context of Petitioners’ request for a fee waiver. The Petition, as does this Response, clearly states that the operations of the G&U cause various injuries particularized to the individuals constituting the class.

ordered to cease and desist by the local enforcement officer, or, ultimately, by a state court of competent jurisdiction. See, Mass. Gen. L. ch. 40A, s. 17.

Moreover, the G&U's activities have resulted in actual harm to the Petitioners. Taking Ms Del Grosso's Affidavit as a representative sample, the harms caused by the G&U are as follows:

- * The wood pellet facility is 40 feet in height. The Upton Zoning By-law limits the height of buildings in the Commercial & Industrial zoning district to 25 feet. The height of the pellet facility does not comport with the character of the neighborhood. It dominates the nearby residences. It causes significant glare and light intrusion, which overflows onto Petitioners' properties. In order to construct a building in excess of the height requirement, if not preempted, a variance is required pursuant to Mass. Gen. L. ch. 40A, s. 10. A variance may only be granted when accompanied by "circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located." For this reason, a lawful variance cannot be granted for the G&U pellet facility.
- * The wood pellet facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The grant or denial of a special permit is within the informed discretion of the granting authority. See, Mass. Gen. L. ch., 40A, s. 9. In the special permit process, the granting authority may impose reasonable conditions at the expense of the applicant. The pellet facility causes glare, dust, and noise, as cited in the Del Grosso Affidavit. The decision of the granting authority to deny such special permit application would be entirely defensible. *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638-639 (1970)("The board is not compelled to grant the permit. It has discretionary power in acting thereon. The board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the by-law.") In the alternative, the granting authority could issue the permit subject to conditions to mitigate such harms. See., e.g., *Tebo v. Board of Appeals of Shrewsbury*, 22 Mass. App. Ct. 618 (1986)(regarding dust control); *Shuman v. Board of Alderman of Newton*, 361 Mass. 758, 762 n.7 (1972)(approving conditions regarding limits on vehicles, noise, possession of substances, site maintenance, landscaping, parking).
- * The transloading activities also, if not preempted, require the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A, Note 6. In storage facilities and warehouses, all above-ground storage are limited to ten thousand

(10,000) gallons One rail tanker holds 25,000-35,000 gallons. Storage is offered on the G&U Website (by Dana, their 3PL Partner). See Exhibit 8. The storage of hazardous materials in proximity to the Del Grosso Property could be rejected or mitigated as an activity incompatible with nearby residential use. As the Petition notes, two tankers marked with methyl cyanide warnings has been stored near the residences since May 12, 2012.

- * Section 9.4.1.1 of the Upton Zoning By-laws requires the pellet facility and the transloading operations to obtain site plan approval from the Planning Board. Again, if the special permit is approved, this process is likely to result in conditions mitigating the injuries asserted by the Petitioners.

Thus, the injuries alleged by Del Grosso, et al, - glare, light intrusion, noise, dust, diminution of property values, truck noise, - are “legitimate zoning-related concerns” long recognized by Massachusetts courts as grounds for standing. *Barvenik v. Board of Aldermen of Newton*, 33 Mass. App. Ct. 129, 133 (1992).

Moreover, these injuries are also cognizable under Section 702 of the federal APA, 5 U.S.C, s. 702. The Supreme Court has afforded standing to plaintiffs with injuries that are economic, recreational, environmental, or aesthetic when such injuries are “distinct and palpable.” *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972); *United States v. SCRAP*, 412 U.S. 669 (1973).

In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992), the Supreme Court added two additional prongs to the modern test for standing:

Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court. Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be redressed by a favorable decision. (citations omitted)

A Petition for Declaratory Order is more analogous to a complaint for a declaratory judgment than the appeal of an agency decision. Nonetheless, Petitioners meet the additional requirements of *Lujan*. But for a finding of preemption by the Board, the injuries summarized above would not result. Local zoning would not allow, or would mitigate these injuries. A decision by the Board favorable to Petitioners and denying the claim of preemption would redress these injuries.

For the above-stated reasons, the Board is requested to rule that the Petitioners have standing.

II. THE PETITIONERS ARE NOT FIRST REQUIRED TO EXHAUST STATE LAW REMEDIES.

Without any citation to precedent, the G&U asserts that Petitioners are obliged to exhaust state remedies before commencing a Petition for Declaratory Order before the Board.² This argument has no merit.

As noted above, a Petition for Declaratory Order is analogous to a complaint for declaratory judgment. In Massachusetts, Mass. Gen. L. ch. 231A, s.1 authorizes proceedings for declaratory judgment “in any case in which an actual controversy has arisen.” Mass. Gen. L. ch. 231A, s. 2 states that such proceedings may be used “to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official which practices or procedures are alleged to be in violation of the Constitution of the United States or of the constitution or laws of the commonwealth, or are in violation of rules or

² The G&U coarsely suggests in this regard that the Petitioners - who have lived every day since May 2, 2012 with two tankers parked near their homes with placards marked “Methyl Cyanide” - are proceeding only due to a “figment of ... [their] imagination.”

regulations promulgated under the authority of such laws, which violation has been consistently repeated.”

In the instant matter, there is ample evidence of an actual controversy. The Petitioners have long complained about the activities on the G&U property. See Exhibits 9 and 10. On July 25, 2012, Diana Del Grosso made her enforcement request formal by seeking a cease and desist order pursuant to the Upton Zoning By-Laws and Mass. Gen. L. ch. 40A, s. 7. See Exhibit 11. The Building Commissioner denied her request on August 2, 2012, alleging that the matter is controlled by preemption pursuant to 49 U.S.C. §10501(b). See Exhibit 12. On August 30, 2012, Ms Del Grosso appealed this decision to the Upton Zoning Board of Appeals pursuant to Mass. Gen. L. ch. 40A, ss. 8 and 15. See Exhibit 13. The Board has sixty five days to schedule the opening of a public hearing.

The regulations of the Board require exhaustion of remedies *of any Board decision* before an appeal for judicial review. 49 CFR 1115.6. However, the regulations of the Board do not establish any prerequisites for the filing of a Petition for Declaratory Order, which is otherwise governed by 49 CFR 1117.1 (“A party seeking relief not provided for in any other rule may file a petition for such relief.”) On its face, 49 CFR 1117.1 contains no requirement that such petitions must follow exhausted state administrative remedies.

In short, the G&U is grasping at straws by claiming that the Petitioners must exhaust state zoning remedies before seeking a Board determination that the railroad is not preempted under 49 U.S.C. §10501(b). There is no such requirement. Only the Board can make a determination of preemption. For this reason, the Petitioners urge the Board to reject the G&U’s argument.

III. THE PELLET FACILITY IS NOT PREEMPTED.

In its Reply, the G&U claims that transloading the wood pellets at the G&U facility does not "change the nature" of the goods. Reply, at p. 19. The G&U claims that "the pellets are exactly the same before and after they are transloaded." Reply at p. 20. This claim is not true.

Contrary to the G&U's Reply, the pellets are not the "same" before and after they are transloaded. The wood pellets are in bulk prior to transloading; they are in bags ready for sale subsequent to transloading. Pellet dust fines are screened and then vacuumed at the Upton facility. This activity has been identified by Viridis as part of the wood pellet manufacturing process. See Exhibit 14.

Although the G&U claims that the pellets are not "cleaned" or "washed" in Upton, it is admitted that dust and small particles are removed and disposed of as waste. See, Polselli Verified Statement, at page 4. This process adds value to the final bagged pellets. It is inescapable that pellets bagged *with* dust and small particles would be worth less on the open market.³ Thus, the process constitutes manufacturing or processing and is not exempt..

By the G&U's own admission, the final steps of the manufacturing process occur at the Upton Facility. The stubborn fact remains that the following activities are all listed as part of the Viridis wood pellet manufacturing process now occurring at the Upton Facility:

- * Screening of pellets to remove dust and fines;

³ The website of Okanagan Pellet Company, a subsidiary of Viridis, states that: "Excessive fines represent loss of usable fuel and cause performance and maintenance problems. They are also a source of irritation for appliance owners when the dust escapes into the home during pouring from the bag into the hopper. The fines are less likely to burn because they are easily blown away from the flame by combustion air. Fines cause performance problems, including loss of fuel feeding if they build up on the sides of the hopper and reduce the opening size to the fuel delivery system.

- * Vacuuming of pellets;
- * Bagging of pellets;
- * Palletizing of bagged pellets; and
- * Shrink wrapping of pallets.

The first steps add value because the pellets are improved and prepared for market. The last step - shrink wrapping - adds value because it serves as a moisture barrier. These activities are not “transportation” by a rail carrier. These activities are highly automated. Each part of the process is conducted by a high-tech machine. The pellet operation is the essence of processing. More importantly, it could occur anywhere before or after the transport to the Upton Facility. The processing has nothing to do with rail transportation. These activities, and the facilities that support them, violate local zoning regulations and cause injury to the Petitioners. The Petitioners urge the Board to rule that the pellet facility is not preempted under 49 U.S.C. §10501(b).

IV. THE G&U TARIFF WAS NOT MODELED AFTER “ALEXANDRIA.”

As the G&U’s Reply and supporting materials carefully explain, the formation of Grafton Upton Railcare, LLC (“GU Railcare”) followed the Board’s decision in *City of Alexandria, Virginia - Petition for Declaratory Order*, STB Finance Docket No.: 35157 (February 9, 2009)(“*Alexandria*”). The Verified Statement of Ronald Dana indicates that he “formed Grafton Upton Railcare, LLC ... to provide transloading services for and on behalf of the G&U at the Upton railyard.”

In *Alexandria*, the Board reviewed Norfolk Southern's ("NS") two types of tariffs, a Contractor Facility tariff and a Licensed Facility tariff. The NS Alexandria facility was a Contractor Facility and was determined to be preempted by the Board.

In the instant matter, the G&U claims that its agreements with GU Railcare, and operations generally, are modeled after *Alexandria*. G&U Reply pp. 6-7. In part, that statement is accurate. There are large portions of the G&U tariff that have been copied verbatim from the NS tariff. However, it is crucial to note that key tariff provisions associated with the preempted Alexandria NS Contractor Facility have been omitted from the G&U tariff and have been replaced, verbatim, with provisions from the tariff used at NS Licensed Facilities.

The difference is crucial. The NS Contractor Facility found to be preempted in *Alexandria* had a tariff which required the facility to be "operated by NS using a third-party contractor transloading approved products on behalf of NS for furtherance of NS rail transportation." The G&U tariff (and the NS Licensed Facility tariff) states that the facility is to be "operated by an independent terminal operator."

Thus, NS Contractor Facilities like the one in *Alexandria* make it clear that the transloading is under the control of the railroad. A key tariff provision states that:

All services offered by NS to a TBT Customer at Contractor Facilities are a component of rail transportation and required for initial loading or transloading, as applicable, of the Product. As such, a freight rate for shipments to these facilities includes terminal services, as described in Item 115. There is no additional charge for services provided directly by the Contractor Facilities to the Shipper or Consignee.

The G&U Tariff has no similar provision stating that services offered are a component of rail transportation. Instead, the G&U Tariff states that "charges for unloading of railcars to trucks and unloading trucks to railcars at a GUBT will be determined and collected on an individual

basis by the Terminal Operator.” An NS Licensed Facility tariff uses similar language as the G&U tariff and states that: “charges for unloading of railcars to trucks and unloading trucks to railcars at a Licensed Facility will be determined and collected on an individual basis by the Licensee.”

Unlike the NS Contractor Facility found to be preempted in *Alexandria*, where transloading charges are bundled into the cost of the railroad freight rate for shipments to the facility, the G&U tariff allows the terminal operator, GU Railcare, to separately set rates and collect fees for transloading. While the G&U has stated “requests for discounts are discussed between G&U and Grafton Upton Railcare and final decisions are made by G&U whether to accommodate the request” (G&U Reply, p. 27), no such requirement exists in the G&U tariff.

Finally, unlike anything found in the NS tariff (for either Contractor or Licensed Facilities), the G&U tariff states that “the Shipper and the Terminal Operator may agree upon the performance of services in addition to those listed above, at rates to be negotiated by the parties.” This leaves the door wide open for non-transloading services being provided at the Upton Facility by GU Railcare or by others including other Dana Companies. Furthermore, G&U markets the Upton Facility as having other services available on-site. G&U’s website regarding the Upton Envirobulk terminal states: “The facility is an open terminal, but also benefits from the on-site 3PL trucking and transload services of industry-respected provider Dana Transport.” Dana Transport is also listed on the website as G&U’s 3PL Partner. Indeed, the marketing of the Upton Facility includes several types of services other than transloading. The G&U website states:

The Envirobulk terminal is also part of the Grafton & Upton's I-90/I-495 Logistics Hub. This allows customers to take advantage of the wider range of 3PL services available within the hub. These include: truck weighing, pellet packaging, warehousing, liquid bulk and pellet storage, and truck storage.

See Exhibit 8.

V. GRAFTON UPTON RAILCARE LOOKS SUSPICIOUSLY LIKE A SHAM.

The formation of GU Railcare followed the Board's decision in *Alexandria* and significant local scrutiny by Upton officials.⁴ The Verified Statement of Ronald Dana indicates that he "formed Grafton Upton Railcare, LLC ... to provide transloading services for and on behalf of the G&U at the Upton railyard." Presumably, before the creation of GU Railcare (a Dana Company), at least some of the transloading was being performed at the yard by Dana Transport, Inc., Dana Rail Care, Liquid Transport Corp., International Equipment Leasing, Inc., or Suttles Truck Leasing, LLC, the other "Dana Companies" cited in Mr. Dana's Verified Statement. Indeed, there has been a Dana presence at the G&U railyard since at least 2009. See Exhibit 15.

Nothing in *Alexandria* suggests that it was intended to overrule the long-standing test summarized in *GWI Switching Services, L.P.—Operation Exemption—Lines of Southern Pacific Transportation Company*, Surface Transportation Board No.: 32481 (August 7, 2001) ("*Southern Pacific*"):

To determine whether a transaction was a sham, the ICC developed and applied a two-part "alter ego" test focused on whether the noncarrier subsidiary: (1) was created for legitimate and substantial business reasons (e.g., insulation from financial risk, preservation of service, or time constraints) and not solely to avoid labor protection; and

⁴ Despite the rosy picture painted by the G&U of local cooperation, 2010 was marked by some controversy. See below.

(2) was sufficiently independent of its parent or their affiliated carriers under the indicia of independence. See, e.g., Mountain Laurel Railroad Company--Acquisition and Operation Exemption--Consolidated Rail Corporation, Finance Docket No. 31974 (STB served May 15, 1998) (Mountain Laurel).

In the instant matter, GU Railcare looks suspiciously like a sham. The Petitioners respectfully request the Board to determine whether GU Railcare was setup for “legitimate and substantial business reasons.”

As noted in the Reply, the Dana family of companies has vast experience in motor carrier transportation as well as transloading operations involving bulk commodities. The Dana family of companies already had transloading capability and expertise present at the G&U yard prior to the formation of GU Railcare and a major facility approximately five miles from the Upton railyard. However, instead of executing a Terminal Transloading Agreement under the name of an established Dana company, a new special-purpose company was created instead.

The G&U admits that GU Railcare’s formation was driven, at least in part, by the need to claim preemption: “[I]n structuring the relationship, we were acutely aware of, and tried to comply with, the requirements of preemption.” Delli Priscoli Verified Statement, p. 5. The timeline of GU Railcare’s formation raises serious questions as to whether this company was set up solely to obtain preemption. The agreement between the G&U and GU Railcare was executed on December 30, 2010. However, GU Railcare was not formed until April 27, 2011. The Petition contains the corporate records for GU Railcare.

Prior to that, it was other long-established Dana companies, not GU Railcare, performing the transloading at the Upton Facility. In 2009, Dana Transport, not GU Railcare, hired an advisor to “assist it in setting up a rail transfer operation in Upton.” See Exhibit 16, footnote 3

on page 4 of 4. The involvement of Dana at the Upton Facility was reported in a railroad journal. Headlines from June 15, 2009 include: “GU: Dana Transport and the railroad will develop a bulk terminal” and “THE RAILROAD [G&U] AND DANA TRANSPORT PLAN TO JOINTLY DEVELOP A TERMINAL HERE [at the Upton Facility].” See Exhibit 17.

All indications point to a scenario whereby Dana was extensively involved in operations at the Upton Facility in 2009 and 2010 well before the before paperwork for GU Railcare was executed. Website pages for Dana Railcare available for public viewing at that time announced that “the Grafton & Upton Railroad completes track work to Dana's new transloading yard” (See Exhibit 18, dated December 31, 2009). This was one year before the GU Railcare Agreement was executed.

In February 2010, the owner of G&U was reported as stating: “a business producing and transporting wood pellets is using the West Upton site. Raw material comes into the yard on the trains where they are then treated, bagged and taken to businesses like Costco, Lowe's and Home Depot.” See Exhibit 19. Thereafter, Upton officials investigated the preemptive status of the Upton Facility. In May 2010, Pat Roche, Upton Building Commissioner, questioned whether it was appropriate for the railroad to be offloading wood pellets from railcars to storage silos and repacking into smaller containers to then be loaded onto trucks and shipped. See Exhibit 20.

As local officials began to question the issue of preemption, the G&U and Dana narrative started to change. On June 3, 2010, Mr. Delli Priscoli responded to Upton Building Commissioner: “G&U is performing, either directly or by contractors working for and under the supervision of the G&U, the rail service, the unloading of the railcars, the transferring of the pellets to the silos, the storage of the pellets, the transferring of the pellets to bags and the

dispatching of the trucks for final delivery. We believe this is classic rail transloading operation." See Exhibit 20.

The Dana Companies continued operations at the Upton Facility for the remainder of the year 2010, all prior to the formation of GU Railcare. Ultimately an agreement was executed by and between the G&U and GU Railcare in December 2010; GU Railcare was formed in April 2011. As admitted by G&U, "...in structuring the relationship, we were acutely aware of, and tried to comply with, the requirements of preemption." Delli Priscoli Verified Statement, p. 5.

Petitioners therefore assert that the formation of GU Railcare was not driven by legitimate and substantial business reasons, but instead suspiciously appears to be a thinly veiled mechanism to obtain federal preemption and to avoid local regulations. GU Railcare's formation came closely on the heels of questions raised by local officials. The formation of GU Railcare occurred long after the Dana Companies had established a substantial presence at the Upton Facility. The G&U tariff is perhaps the clearest example of the fact that the Dana Companies, nominally operating at the G&U yard as GU Railcare, intended then and now to maintain a degree of independence in operations at the yard that *Alexandria* otherwise proscribes.

As to "indicia of independence," the Board has identified several factors to determine whether a corporate subsidiary is sufficiently independent of its parent. First, the Board has considered whether a separate, independent entity within a corporate family has its own employees and general manager. See *Southern Pacific*. In applying this standard, GU Railcare must fail. The local management of GU Railcare is identical to the management of the Dana Transport company located just five miles away. Mike Polselli is manager for both Dana Transport and GU Railcare.

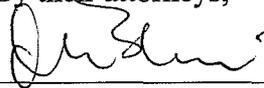
It is difficult to know the answers to the remaining questions posed by *Southern Pacific* without the benefit of discovery. One suspects that Mr. Polselli draws a paycheck from the Dana Transport, not GU Railcare. As to who shoulders the risk of doing business and assumes responsibility for any resulting liability, further discovery is required. As noted by Ms Del Grosso in her original Affidavit, the equipment of the Dana Companies is omnipresent at the Upton railyard. She has never seen any equipment marked "GU Railcare." GU Railcare's contractual relationships in its own right are a matter for discovery.

CONCLUSION

For the above-stated reasons, the Petitioners request the Board to rule that (1) the pellet facility is not preempted under 49 U.S.C. §10501(b); and (2) that the transloading operations, trucking, storage, and 3PL operations at the Upton railyard are not being conducted under the control of the rail carrier and are not preempted under 49 U.S.C. §10501(b). In the event that the Board determines that discovery is warranted to reach these conclusions, the Petitioners reiterate their request for discovery.

DATE: September 10, 2012

Petitioners,
By their attorneys,



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Adam J. Costa, BBO#
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EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF DIANA DEL GROSSO

I, Diana Del Grosso, do hereby depose and state, on personal knowledge and belief, the following:

1. I own the property located at and reside at 15 Depot Street, Upton, Massachusetts (the "Del Grosso Property"). I have owned this property for approximately five years, and I have been a resident of Upton since 1994.
2. The Del Grosso Property is located in a Commercial & Industrial zoning district.
3. The Southern boundary of the Del Grosso Property is located approximately 50 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 200 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").
4. The residence of the Del Grosso Property and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences

and are located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.

6. The Del Grosso Property is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Del Grosso Property. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue are reportedly complete, yet have been largely unsuccessful. While some exterior piping has been insulated, the

most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever even though this issue has been brought to the attention of the railroad and the railroad agreed to “look at it” according to published local Board of Health meeting minutes. The noise continues to be excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. Due to its excessive height, proximity and exterior characteristics of the Upton Facility wood pellet storage silos, the Del Grosso Property is directly and adversely impacted by excessive glare emitted from the silos. The Upton zoning bylaw provision in Section 5.5 requiring that no glare be discernible from the outside of any structure has not been enforced.

8. The Upton Facility fails to protect the Del Grosso Property residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Del Grosso Property. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in a school evacuation. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A

few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

9. The activities at the Upton Facility generate truck noise and truck traffic that negatively impact the Del Grosso Property. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

10. The main building structure currently associated with the Upton Facility has multiple light sources clearly visible from the Del Grosso Property. These light sources shine into the residence at night and are an intrusion and nuisance negatively impacting the Del Grosso Property. The Upton zoning bylaw provision in Section 5.6 requiring that no exterior lighting, other than street lighting approved by the Selectmen, shine on adjacent properties or towards any street in such a manner as to create a nuisance

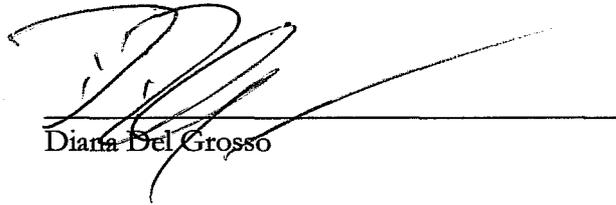
or hazard has not been enforced.

- 11. The Del Grosso Property residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property line has not been enforced.
- 12. The Del Grosso Property residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.
- 13. The Del Grosso Property residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.
- 14. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as

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identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September,
2012.



Diana Del Grosso

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF RAY SMITH

I, Ray Smith, do hereby depose and state, on personal knowledge and belief, the following:

1. I own the property located at and reside at 9 Railroad Avenue, Upton, Massachusetts (the "Smith Property"). I have owned this property for approximately fifteen years, and I have been a resident of Upton for over 50 years.
2. The Smith Property is located in a Commercial & Industrial zoning district.
3. The Southern boundary of the Smith Property is located approximately 75 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 250 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").
4. The residence of the Smith Property and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences and are

located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.
6. The Smith Property is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Smith Property. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue have been largely unsuccessful. While some exterior piping has been insulated, the most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever. The noise continues to be

excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. Due to its excessive height, proximity and exterior characteristics of the Upton Facility wood pellet storage silos, the Smith Property is directly and adversely impacted by excessive glare emitted from the silos. The Upton zoning bylaw provision in Section 5.5 requiring that no glare be discernible from the outside of any structure has not been enforced.

8. The Upton Facility fails to protect the Smith Property residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Del Grosso Property. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately

striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

9. The activities at the Upton Facility generate truck noise and truck traffic that negatively impact the Smith Property. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.
10. The Smith Property residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property line has not been enforced.
11. The Smith Property residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to

the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.

12. The Smith Property residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.

13. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September,
2012.



Ray Smith

EXHIBIT 3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DELGROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF JOE HATCH

I, Joseph Hatch, do hereby depose and state, on personal knowledge and belief, the following:

1. I rent the property located at and reside at 17 Depot Street, Upton, Massachusetts (the "Joseph Hatch Residence"). I have rented this property for approximately 25 years.
2. The Joseph Hatch Residence is located in a Commercial & Industrial zoning district.
3. The Southern boundary of the Joseph Hatch Residence is located approximately 50 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 200 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").
4. The residence of the Joseph Hatch Residence and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences

and are located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.

6. The Joseph Hatch Residence is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Joseph Hatch Residence. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue have been largely unsuccessful. While some exterior piping has been insulated, the most

offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever. The noise continues to be excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. Due to its excessive height, proximity and exterior characteristics of the Upton Facility wood pellet storage silos, the Joseph Hatch Residence is directly and adversely impacted by excessive glare emitted from the silos. The Upton zoning bylaw provision in Section 5.5 requiring that no glare be discernible from the outside of any structure has not been enforced.

8. The Upton Facility fails to protect the Joseph Hatch Residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Hatch residence. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail

service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

9. The activities at the Upton Facility generate truck noise and truck traffic that negatively impact the Joseph Hatch Residence. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.
10. The Joseph Hatch Residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property line has not been enforced.
11. The Joseph Hatch Residence has been directly impacted by offensive odor emissions

generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.

12. The Joseph Hatch Residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.

13. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September, 2012.


Joseph Hatch

EXHIBIT 4

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DELGROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF CHERYL HATCH

I, Cheryl Hatch, do hereby depose and state, on personal knowledge and belief, the following:

1. I rent the property located at and reside at 17 Depot Street, Upton, Massachusetts (the "Cheryl Hatch Residence"). I have rented this property for approximately 25 years, and I have been a resident of Upton for over 40 years.

2. The Cheryl Hatch Residence is located in a Commercial & Industrial zoning district.

3. The Southern boundary of the Cheryl Hatch Residence is located approximately 50 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 200 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").

4. The residence of the Cheryl Hatch Residence and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences

and are located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.
6. The Cheryl Hatch Residence is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Cheryl Hatch Residence. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue are reportedly complete, yet have been largely unsuccessful. While some exterior piping has been

insulated, the most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever even though this issue has been brought to the attention of the railroad and the railroad agreed to "look at it" according to published local Board of Health meeting minutes. The noise continues to be excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. Due to its excessive height, proximity and exterior characteristics of the Upton Facility wood pellet storage silos, the Cheryl Hatch Residence is directly and adversely impacted by excessive glare emitted from the silos. The Upton zoning bylaw provision in Section 5.5 requiring that no glare be discernible from the outside of any structure has not been enforced.
8. The Upton Facility fails to protect the Cheryl Hatch Residence residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Hatch residence. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news.

There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

- 9. The activities at the Upton Facility generate truck noise and truck traffic that negatively impact the Cheryl Hatch Residence. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

- 10. The Cheryl Hatch Residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property

line has not been enforced.

11. The Cheryl Hatch Residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.
12. The Cheryl Hatch Residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.
13. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September, 2012.


Cheryl Hatch

EXHIBIT 5

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF KATHLEEN KELLEY

I, Kathleen Kelley, do hereby depose and state, on personal knowledge and belief, the following:

1. I own the property located at and reside at 17 Farm Street, Upton, Massachusetts (the "Kelley Property"). I have owned this property for approximately 21 years, and I have been a resident of Upton since 1986.
2. The Kelley Property is located in a Commercial & Industrial zoning district.
3. The Southern boundary of the Kelley Property is located approximately 75 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 500 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").
4. The residence of the Kelley Property and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences and are

located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.
6. The Kelley Property is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Kelley Property. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue have been largely unsuccessful. While some exterior piping has been insulated, the most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever. The noise continues to be

excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. The Upton Facility fails to protect the Kelley Property residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Del Grosso Property. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special

permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

8. The activities at the Upton Facility generate truck noise and truck traffic that negatively impact the Kelley Property. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

9. The Kelley Property residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property line has not been enforced.

10. The Kelley Property residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.

11. The Kelley Property residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described

above.

- 12. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September,

 2012.

Kathleen E Kelley

 Kathleen Kelley

EXHIBIT 6

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WIKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF ANDREW WIKLUND

I, Andrew Wiklund, do hereby depose and state, on personal knowledge and belief, the following:

1. I own the property located at and reside at 5 Railroad Avenue, Upton, Massachusetts (the "Wiklund Property"). I have owned this property since May, 2011.

2. The Wiklund Property is located in a Commercial & Industrial zoning district.

3. The Southern boundary of the Wiklund Property is located approximately 125 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 350 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").

4. The residence of the Wiklund Property and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences and are located on individual lots with landscaped front, side, and rear yards. All street

segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.

5. The Upton Facility involved, among other things, construction of two massive wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.

6. The Wiklund Property is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Wiklund Property. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue have been largely unsuccessful. While some exterior piping has been insulated, the most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever. The noise continues to be excessive and can persist for extended periods of time

causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

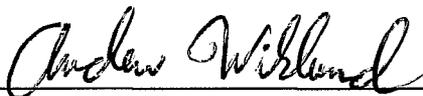
- 7. The Upton Facility fails to protect the Wiklund Property residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Del Grosso Property. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a

criterion for issuing a special permit has not been enforced.

8. The Wiklund Property residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a business/commercial property line has not been enforced.
9. The Wiklund Property residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.
10. The Wiklund Property residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.
11. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as

identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September,
2012.



Andrew Wiklund.

EXHIBIT 7

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF RICHARD KOSIBA

I, Richard Kosiba, do hereby depose and state, on personal knowledge and belief, the following:

1. I own the property located at and reside at 6 Railroad Avenue, Upton, Massachusetts (the "Kosiba Property"). I have owned this property for approximately 40 years, and I have been a resident of Upton since then.
2. The Kosiba Property is located in a Commercial & Industrial zoning district.
3. The Southern boundary of the Kosiba Property is located approximately 125 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 300 feet from the wood pellet packaging facility at the Upton Rail Facility which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility").
4. The residence of the Kosiba Property and proximate residences along Depot Street, Farm Street and Railroad Avenue are predominantly one family residences and are located on individual lots with landscaped front, side, and rear yards. All street segments lie within established neighborhoods where individual residences, although of various architectural styles, combine to create an overall sense of harmony and compatibility of form and scale. The residential scale of these neighboring street segments are in marked contrast to the mass and scale of the Upton Facility.
5. The Upton Facility involved, among other things, construction of two massive

40

wood pellet storage silos approximately forty feet high. The silos are well in excess of the twenty five foot maximum structure height contained in Section 4.2, Table C, of the Upton zoning bylaw for structures located in a Commercial & Industrial zoning district and are in sharp contrast to the scale of the residences that predominate along the above segments of Depot Street, Farm Street and Railroad Avenue. The Upton Facility, due to its mass, scale, and height, are clearly visible and dominate these segments of Depot Street, Farm Street and Railroad Avenue permanently altering their residential character. The Upton zoning bylaw dimensional regulations in Section 4.2 have not been enforced.

6. The Kosiba Property is subjected to excessive noise from equipment and operations associated with the Upton Facility wood pellet storage silos due to locating the silos and attendant equipment in such close proximity to the Kosiba Property. After over a year of requesting relief from town and state departments, recent attempts by the railroad to address the noise issue have been largely unsuccessful. While some exterior piping has been insulated, the most offensive noise generator, the apparatus atop the silos, has not been addressed whatsoever. The noise continues to be excessive and can persist for extended periods of time causing me physical distress and mental anguish. The Upton zoning bylaw noise requirement in Section 5.4 requiring total sound level to be no more than three decibels above the natural ambient sound level has not been enforced.

7. The Upton Facility fails to protect the Kosiba Property residence from incompatible activities due to potential health and safety concerns. Storage of hazardous chemicals, coupled with the stated incidents below adds to our fears and concerns. Several rail tankers marked Dana RAILCARE and marked with methyl cyanide placards have been stored continuously since May 2, 2012 approximately 50 feet from the Del Grosso Property. In the neighboring town of Grafton, Dana Transport was cited last year for an incident involving the release of nitric acid that resulted in the evacuation of a school, as well as residents from nearby homes. It also created a large, chemical vapor cloud over the area, as reported in the news. There was also a recent derailment of an ethanol rail car on the way to the Upton facility. I am unaware of any evacuation plan in effect for the neighborhood should there be an industrial accident at the Upton Facility. A few years ago, there was a runaway rail service car that broke loose and sped past the Upton Facility, ultimately striking a car. I have also been told by a neighbor that there was an incident involving the loud sound of a pressure relief valve on a rail car venting gas in close proximity to the neighborhood and that town officials contacted DANA, not G&U, in response to that non-transloading incident. The Upton Facility, if not preempted, requires the issuance of a special permit. See Upton Zoning By-laws, Section 3.1.3, Table A. The Upton zoning bylaw provision in Section 9.3 requiring that the special permit granting authority consider the adverse effects of a proposed use as a criterion for issuing a special permit has not been enforced.

8. The Kosiba Property residence has been directly negatively impacted by offensive dust emissions generated by typical Upton Facility ongoing activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive dust emissions be discernible beyond a

business/commercial property line has not been enforced.

- 9. The Kosiba Property residence has been directly impacted by offensive odor emissions generated by typical ongoing Upton Facility activities due to proximity to the Upton Facility. The Upton zoning bylaw provision in Section 5.3 requiring that no offensive odor emissions be discernible beyond a business/commercial property line has not been enforced.

- 10. The Kosiba Property residence has suffered a loss in property value arising from the sum total of all of the negative impacts attributable to the Upton Facility as described above.

- 11. Local regulations including town zoning regulations have not been enforced due to the claim by certain town officials that the Upton Facility is federally preempted. Other town officials including the town Planning Board, a duly elected board, have requested that the town seek a Declaratory Order from the Board to resolve any uncertainty or controversy. The net result has been municipal inaction including lack of enforcement of local zoning including a multitude of zoning provisions as identified above.

Signed by me under the pains and penalties of perjury, on this 9th day of September, 2012.



Richard Kosiba

EXHIBIT 8

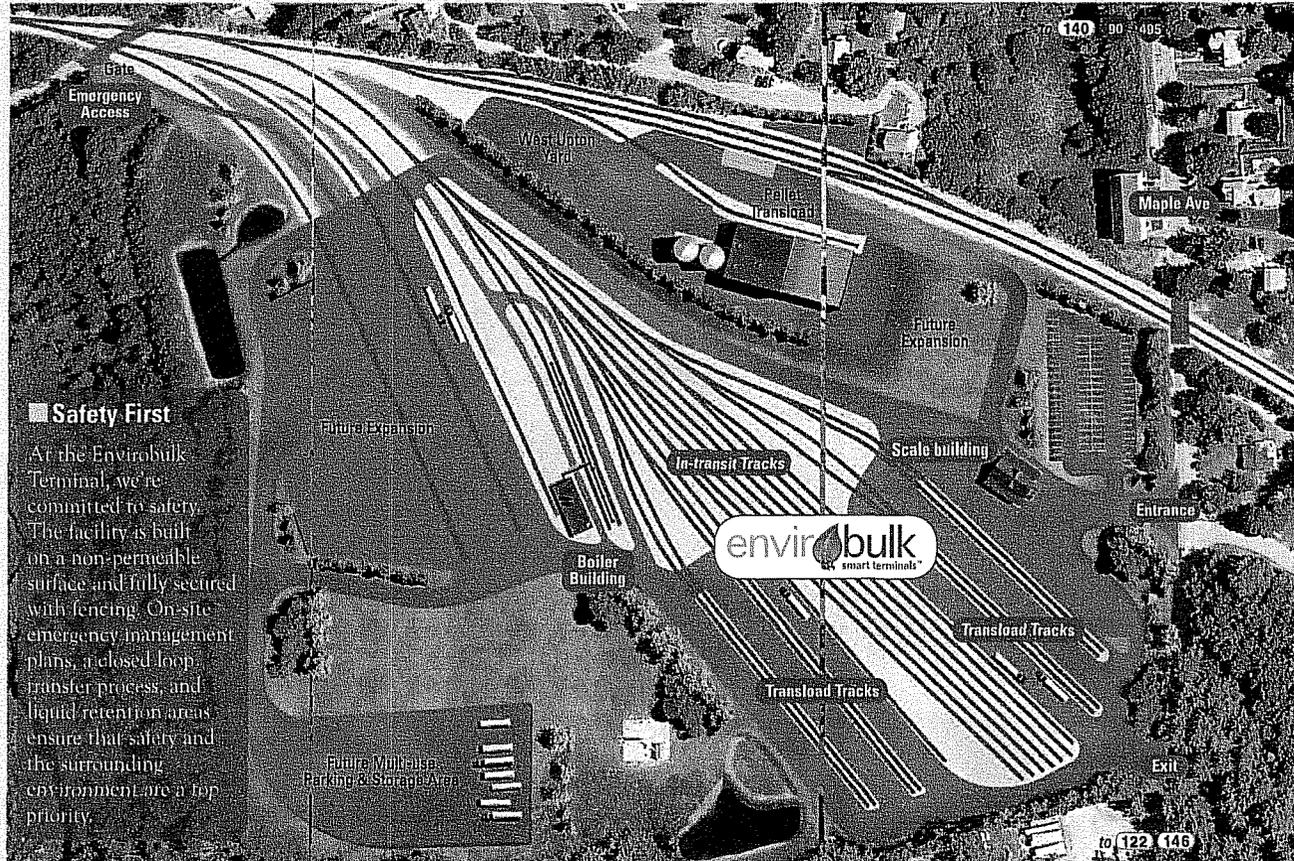


The difference is in the details

The Envirobulk Terminal's railroad-owned, 38-acre site is located in Upton, Massachusetts, near the interchange of I-90 (the MassPike) and I-495. The facility's strategic placement, broad range of services, flexible operations, and excellent connections - both rail and highway - are unequalled in any other Northeast transload. Over 100 "live" transload spots will be available, backed by over 70 in-transit spots. The facility is an open terminal, but also benefits from the on-site 3PL trucking and transload services of industry-respected provider Dana Transport. Interstate access allows for one day (or less) travel times throughout New England and much of the Northeast.

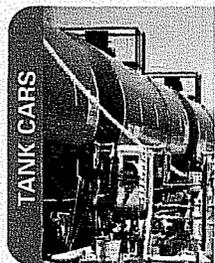
Because the Envirobulk Terminal is part of a shortline railroad and managed by one of North America's premier bulk operators, its knowledgeable staff can respond to your individual needs much quicker and easier than at other terminals. On-demand switching, extended terminal hours, quality control, and inventory management are only a few of the custom services that they can provide.

The Envirobulk terminal is also part of the Grafton & Upton's I-90/I-495 Logistics Hub. This allows customers to take advantage of the wider range of 3PL services available within the hub. These include: truck weighing, pellet packaging, warehousing, liquid bulk and pellet storage, and truck storage.



■ Safety First

At the Envirobulk Terminal, we're committed to safety. The facility is built on a non-permeable surface and fully secured with fencing. On-site emergency management plans, a closed loop transfer process, and liquid retention areas ensure that safety and the surrounding environment are a top priority.



■ Liquid Bulk Services

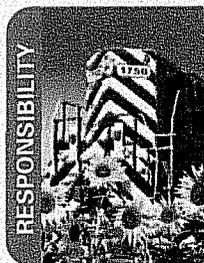
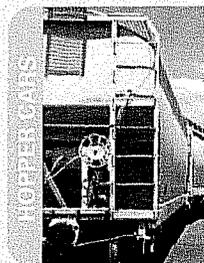
Liquid bulk products have unique needs. Let us safely and efficiently help you with:

- Biodiesel
- Syrups
- Ethanol
- Vegetable oils
- Liquid pump service
- Railcar heating

■ Transport Services

Our 3PL partner has over 35 years of experience in bulk transport. Look to them to help you with:

- Truck Wash
- 3PL Services
- Dry Bulk
- Liquid Bulk
- ISO Containers



■ Dry Bulk Services

Shipments large or small, we can handle:

- Plastics
- Cement
- Flyash
- Fertilizer
- Sand
- Lime
- Flour
- Sugar
- Starch
- Grains

■ Environmental Commitment

Rail is the most environmentally friendly way of moving freight over land. The Envirobulk Terminal allows for:

- Utilization of rail closer to the customer
- Reduction of carbon emissions
- Servicing of non-rail customers



get tariffs, terminal rules, and more online: www.graftonuptonrr.com

EXHIBIT 9

Upton board questions rules for business activity at railroad site

By Morgan Rousseau, Daily News staff

Milford Daily News

Posted Aug 09, 2011 @ 11:35 PM

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UPTON Board members said they were going to ask selectmen to agree to investigate whether businesses operating within the Grafton & Upton Railroad site in town are federally pre-empted from state and local zoning regulations, as owner Jon Delli Priscoli say they are.

Officials intend to present the federal Surface Transportation Board with information about the activity happening at the Maple Avenue property so it can determine if the business operation there, primarily a wood pellet packaging operation, is covered by the railroad pre-emptive status.

The Surface Transportation Board will then determine if the businesses are covered by the pre-emptive status, which allows them to bypass state and local zoning regulations provided they follow the laws laid out by the federal government.

"We believe the pellet packaging operation is not controlled by the railroad, and we're going to ask the Board of Selectmen to help us look into it," said Planning Board member Tom Davidson.

Right now, the concern within the Planning Board and some residents who appeared at last night's hearing is that the business dealings at Maple Avenue are wrongly operating under pre-emption, and are therefore improperly regulated.

"A month and a half ago, the Planning Board was asked to look into activities on Maple Avenue and find out if our involvement was necessary," said Davidson, adding that he invited Delli Priscoli and town officials to sit in on their last meeting, on July 26.

"The answers that we got from railroad and town officials were unsatisfactory, and, in fact, unsettling to say the least," said Davidson.

Davidson led the hearing after Chairman Paul Carey recused himself due to a conflict of interest, along with member Ray Smith who also recused himself because he is an abutter to the property.

Delli Priscoli and his attorneys were present at the July 26 meeting. The following day, Delli Priscoli said that his attorneys and the Upton town counsel were in agreement that the railroad activities are pre-empted.

"(Upton) Planning Board members don't seem to like the fact that pre-emption is there," said Delli Priscoli, adding that the comments made by Planning Board members were "disturbing and unprofessional."

"It seemed to me that Mr. Davidson doesn't like the fact that the railroad has rights given by the federal government. They're cut and dry, and that's it. We're very comfortable with where we are," said Delli Priscoli.

Delli Priscoli said he wasn't planning on attending any more meetings with the Planning Board following last month's meeting.

Residents at last night's meeting seemed to be in support of an investigation, many calling for more information on the business activity of the Grafton & Upton Railroad.

Former Selectwoman Marsha Paul said the town deserves answers to ensure its residents are protected. Paul was particularly concerned with tankers that are carrying toxic materials, namely acetone, nitric acid and ethanol without proper containment measures.

"If something goes wrong, it could poison our water supplies," said Paul, who is an organic chemist. "We're not looking to shut down the railroad, we just want the to get the facts."

A few other residents pleaded with the Planning Board to continue the investigation because they felt selectmen weren't concerned with digging into the matter.

"I think something not right is going on," said one resident who did not give her name.

Davidson ended the hearing by saying he's looking forward to getting the ruling on the business activity from the Surface Transportation Board.

"In the meantime, I'll talk to selectmen and explain what we see. We need to open up the lines of communication," said Davidson.

Morgan Rousseau can be reached at 508-634-7546 or at Mrousseau@wickedlocal.com.

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EXHIBIT 10

Upton selectmen speak against getting attorney for rail debate

By Morgan Rousseau/Daily News staff
Milford Daily News

Posted Feb 29, 2012 @ 12:00 AM

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[What's this?](#) Fire Chief Aaron Goodale and Police Chief Michael Bradley also answered questions from the public, saying they are monitoring the health and safety effects of the rail yard's operations.

Fleming said another hearing may clear up "rumors and innuendos" about the railroad that are circulating through town.

"I have a financial concern, but the citizens have a right to go (to the Surface Transportation Board) provided that they have the right information. That concerns me. I don't feel the right information is being disseminated," he said.

Grafton & Upton Railroad owner Jon Delli Priscoli was at last night's meeting but did not speak during the discussion. A spokesman for Delli Priscoli said he had no comment.

Morgan Rousseau can be reached at 508-634-7546 or at mrousseau@wickedlocal.com.

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UPTON — Selectmen told Planning Board members last night that the town has better things to do with its money than get into a protracted legal battle over operations of the Grafton & Upton Railroad that it ultimately would lose.

Planning Board members Gary Bohan, Tom Davidson and Margaret Carroll met with selectmen last night to vet the idea of hiring an attorney with privately raised money. The goal would be to push the federal Surface Transportation Board into determining once and for all if the railroad is exempt from local oversight. Months ago, a federal official told residents they had little say over most of the railroad's business.

Sixty residents crowded the board's meeting room last night to show their support for the Planning Board's idea.

"We are here tonight for the people behind us," Davidson said. "There have been concerns over the last 10 months or so. We have asked one specific question that we cannot answer: What is not pre-empted by federal regulation? That's the question we're trying to get answered (from the Surface Transportation Board)."

Selectmen were unmoved, citing potential legal and financial ramifications.

"Seven thousand people need to be represented. ... If we incur legal fees of \$100,000, how do we find those funding (sources)? There is a concern with the financial obligations," Selectmen Chairman Robert Fleming said.

Davidson drew applause from the crowd when he responded that "protecting the citizens is worth the money ... for their safety and well-being."

Davidson said he found it hard to fathom that the town would spend \$5 million to renovate Town Hall but not spend a token amount — \$10,000 — to hire attorney Mark Bobrowski to push the federal agency.

Many of those in support of the idea attended last night's meeting. It was a frenzy at 7 p.m. when several residents, including families with small children, entered the Fire & EMS Headquarters training room on Church Street where selectmen hold their meetings.

Upon seeing the crowd, selectmen suggested rescheduling the meeting until next week, so it could be held at one of the two local high schools.

"If we take action and people are outside (in the hallway), in effect we are violating our due process," Fleming said.

Faced with that option, residents who had been hovering in the hallway pushed into the room. Some stood while others sat on the floor.

At the end of the discussion, Selectman Ken Picard said, "I would not move forward at this time until I have more information."

Selectman James Brochu said he would prefer if the Planning Board waited until the town's Railroad Fact Finding Committee finished its final report.

"This board has listened to the citizenship and has formed (the Fact Finding Committee) made up of citizens and elected officials to come back to the board with a recommendation (on whether to go to the Surface Transportation Board)," Brochu said.

Fleming said the Board of Selectmen may hold another public forum, similar to one held in November, which featured a presentation by William Schoonover of the Federal Railroad Administration, who assured residents that the operations at the Maple Yard rail site were pre-empted from local oversight.



accommodate the large crowd that is expected. "Hopefully, that will help allay some fears and help people understand the situation," Robinson said.

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EXHIBIT 11

By Hand Delivery
July 25, 2012

Building Commissioner
Town Hall
One Main Street
Upton, MA 01568

RE: Grafton & Upton Rail Facility

Dear Commissioner Roche:

Please be informed that I own the property located at 15 Depot Street, Upton, Massachusetts (the "Del Grosso Property"). I have owned this property for approximately five years, and I have been a resident of Upton since 1994. My immediate neighbor to the South is the Grafton & Upton Rail Yard

Pursuant to G.L. c. 40A, s. 7, I hereby request enforcement of the Upton Zoning By-Law with regard to the buildings and operations of the Grafton & Upton Railroad, on property located at 25 Maple Avenue, Upton, Massachusetts (the "G&U Property"). It is my understanding that the G&U leases this Property from the owner, Upton Development Group. Specifically, I request enforcement of the following provisions of the zoning by-law:

1. The pellet silos on the G&U Property are located in a "Commercial and Industrial" zoning district. The zoning by-law, at Section 3.1.3 Table A – Table of Principal Uses by District (Use #41), states that a "plant for light manufacturing or packaging" located in a Commercial and Industrial zoning district requires a special permit from the Zoning Board of Appeals ("ZBA"). A "trucking terminal or motor freight station," an "establishment for the repair or storage of trailers, trucks, farm implements or machinery," and "storage facilities and warehouses" would also require a special permit from the Zoning Board of Appeals. The pellet facility and silos fit one or more of these categories and do not have a special permit.
2. Section 9.5.1 of the zoning by-law requires site plan approval from the Planning Board for "construction, exterior alteration or exterior expansion of two thousand (2000) square feet or greater area." Several of the structures located on the G&U Property trigger this requirement. No site plan approval has been obtained.

3. The height of the silos as well as the renovated portion of the pellet facility building exceeds the standards set forth in Table C in Section 2.4 of the zoning by-law. This requires a variance from the ZBA. See G.L. c. 40A, s. 10. No variance has been obtained.

Kindly respond to this enforcement request within the fourteen days provided by statute. If you have any questions, please let me know.

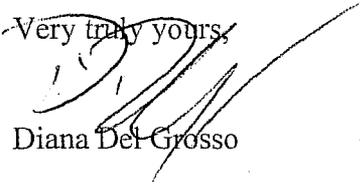
Very truly yours,

Diana Del Grosso

EXHIBIT 12

DEPARTMENT OF CODE ENFORCEMENT

Town of Upton



Massachusetts

Inspector of Buildings
Patrick H. Roche
1 Main Street – Box 16
Upton, Massachusetts 01568

Administrative Assistant
Diane C. Judd
Tel: 508-529-2633 Fax: 508-529-4732
djudd@upton.ma.us

August 2, 2012

Ms. Diana Del Grosso
15 Depot Street
Upton, MA. 01568

Dear Ms. Del Grosso:

This letter is in response to your communication of July 25, 2012 concerning alleged violations of the Town of Upton's Zoning By-Laws by the Grafton & Upton Railroad.

This Department has reviewed your complaints with respect to obtaining a Special Permit from the Zoning Board of Appeals for the operation of the pellet facility, site-plan approval from the Planning Board for structures of two thousand (2000) square feet or greater, as well as the issue of obtaining a variance from the Zoning Board of Appeals relative to the height of several of the structures.

These are all issues that have been raised previously and examined closely. To the best of our knowledge the activities being performed at this location fall within the preemptive scope of 49 U.S.C. § 10501(b) and, therefore, are exempt from local regulations and by-laws.

Thank you for contacting us with your concerns and do not hesitate to communicate any additional questions or concerns you may have.

Regards,

Patrick Roche/dcj
Inspector of Buildings

EXHIBIT 13

August 30, 2012

Upton Zoning Board of Appeals
1 Main Street
Upton, MA 01568

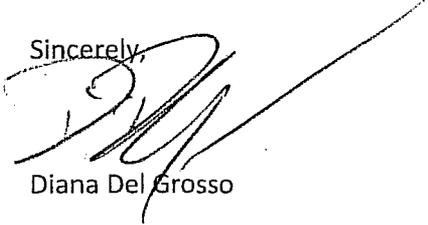
Re: Appeal of Code Enforcement Response

Dear Board Members:

This correspondence shall serve as my request for an administrative appeal of the decision of the attached letter from Patrick Roche dated August 2, 2012, in which he asserted the buildings and operations being performed at the Upton Railyard on Maple Avenue are exempt from local regulations and by-laws. It is my opinion that the decision from Patrick Roche was in error. For your convenience, I have also attached my initial letter of request.

In addition, I would like to reserve the right to file a memo of law at a later date.

Sincerely,



Diana Del Grosso

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UPTON, MA

EXHIBIT 14



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Home Pellets Shavings Process Distributor Newsletter Survey Contact

Manufacturing Process

We pride ourselves on the careful manufacturing processes for our pellets and shavings. We follow exacting standards to ensure that we are producing the highest quality products. Here are some of the things we do to achieve and maintain our high standards.

Pellet Manufacturing

It all starts with the raw material we use to make our pellets. The sawdust we purchase has to be a specific species of pine and/or spruce wood. Our sawdust only comes from sawmills where the bark has been removed from the trees. This helps ensure that there will be no contaminants in our pellets, just 100% softwood. Other pellet manufacturers use whatever wood they can get. This will often result in a lower quality pellet.

We never expose our sawdust to the weather. Our sawdust is always protected from the elements which helps ensure that it is never compromised by contaminants from the outside environment (dirt, rocks, etc.)

Our sawdust is taken directly from enclosed storage bins at the sawmills and delivered to us in covered trucks that dump the sawdust right into our building.

The next steps involve getting the sawdust to the right condition. Before we make pellets the sawdust has to be dried to a precise moisture content. Then the material is ground down to fine particles before being pelletized. As an added precaution high intensity magnets are in place along the manufacturing line to remove any potential metal contaminants.

We use two Andritz Sprout 400 horsepower ring die pellet presses. Our pellet dies are made to our detailed specifications. [See here](#) for a picture of a pellet die. The sawdust is pressed into the holes of the pellet die under extreme high pressure. The pressure creates heat that releases natural glue in the wood called lignin. This natural glue flows around the wood fibers and causes the wood to bind together. The high pressure also ensures a compact and dense pellet.

As the wood pellets are pushed out of the die they are cut off to ensure that the pellet length is within Super Premium specifications. At this point in the process the pellets are fully formed, hot and moist, and still quite soft. The heat and moisture is removed in our specially modified cooling equipment. Once cooled the pellets become hard and durable.

The pellets are then passed across two different screens to remove any under or over sized pellets and also any excess dust. Just before bagging, the pellets are vacuumed to remove any remaining sawdust. Our bagging system is fully automated giving us a fine quality finish to our packaging.

Our stacking process is semi automated. We have highly trained employees handle and examine every bag that we produce. If a bag of pellets doesn't meet our quality control specifications, it will be rejected at this final phase in production. We could have automated this stage, but we strongly feel that strict, humanized quality control is important at this point in the process.

Once the pellet bags are stacked on the pallet (anywhere from 50 to 75 bags per pallet) we use an automated stretch wrapper to put a tight wrap around the pellet bags from top to bottom. A heavy gauge plastic all-weather cover is put over the entire package and then it is fully stretch wrapped again. This keeps everything in place during shipment, whether across the continent or across the ocean. The all-weather cover protects the pellets even when stored outside for long periods.

Shavings Manufacturing

We are very selective of the shavings that we sell to our customers. **Stallion Bedding** shavings have to be white, fluffy, medium size and very absorbent. All of our shavings come from sawmills where they have been kiln dried. Our shavings only come from white pine or spruce.

In our process, we first examine the load of shavings that's been delivered to our facility. If the load doesn't meet our high quality standards for our Stallion Bedding Shavings, we don't use it. Instead it is directed to our pellet manufacturing division.

Once selected, the load of shavings is slowly passed across a series of screens to remove all unwanted sizes and sawdust. In addition, the shavings are vacuumed to remove any remaining sawdust so that the shavings you receive are virtually dust free. In this way, the end result is a consistent product that meets our rigorous standards.

We use specially modified equipment to compress the shavings into 3 cubic foot bales for easy handling and distribution. Our shavings bales are then hand stacked on pallets. Our pallet configuration allows for a 53' trailer to be fully loaded so as to provide the lowest possible freight cost per cubic foot. We put an all weather cap on each stack of bales and then shrink wrap the entire package from top to bottom.

Each bale of our Stallion Shavings weighs approximately 30 pounds. When the bale is opened and decompressed, the shavings expand to cover an area of 12 cubic feet.

Our **Stallion Bedding** shavings are manufactured with stringent quality control guidelines resulting in a year round consistent supply that never changes.

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EXHIBIT 15

“cell,” the hole for the spoils, in the lower harbor. If that goes well, the agency might move to a second cell in the upper harbor. {ANR&P discussion}

Rail this year

CSXT will haul out the dewatered spoils this year. A rail observer has already spotted a long string of GBRX [Greenbrier] gondolas in the New Bedford rail yard. {e-mail to ANR&P 19.Apr.09}

GU: NEW EXPERTISE*

23 April, Newport RI. **THE RAILROAD HAS SIGNED ON CLYDE AMES** as vice-president of marketing and sales. Ames has a wealth of experience: he worked 18 years for PW creating the intermodal terminals in Worcester and the contaminated soils transload operated by MHF [our *Directory* #442]. Later, self-employed, he assisted in the creation of the Pond View C&D facility [see 03#04A] in East Providence.

At the NEARS panel of shippers, Ames said two years ago he joined the Island Environmental Group, part of Island Resources, based in Bay Shore, Long Island, New York. Island Resources does paper/plastics recycling, curb-side pickup services, roll-off container services, soil work (transportation and disposal, both truck and rail), and construction and demolition debris transportation and disposal via rail (it has a facility on the New York and Atlantic Railway though it does not currently ship by rail). It also does container services and environmental consulting.

GU’s owner, John delli Priscoli, hired Ames earlier in 2009 to “handle all business development for the railroad, as well as materials flow and rail equipment investments.”

After the panel, Ames said delli Priscoli wanted to concentrate on developing the property he has purchased next to the GU rail line. Ames will handle the rail-related work, which will tend toward bulk shipping [GU has added a receiver of utility poles—see 09#03B]. He added: ‘G&U logistics opportunities may extend beyond the carload shipment to include destination delivery services, railcar and other asset-based investments, and facility development.’

He could envision a CSX Transflo operation there [PVRR had one, but CSX moved the operation to North Haven—see 96#06B. Beacon Park hosts one, which may remain—see map in 08#11A]. “We’re essentially an arm of CSX anyway.” He has an arrangement with Dana Transport for trucking. {ANR&P coverage; e-mail to ANR&P 27.Apr.09}

PAS/PVRR*

22 April, Westfield. **PVRR AND PAS WILL REOPEN THEIR INTERCHANGE WITHIN SIX MONTHS**, according to a 2008 agreement, said Mike Rennie, PVRR general manager. {e-mail to ANR&P}

The agreement

In 2008, PVRR filed a comment on the proposed NS-ST deal noting that efforts to ‘develop an operable interchange’ with ST and ‘reasonable rate divisions’ had not succeeded. But ‘PVRR has engaged in productive discussions with NS’ leading to a potential agreement that PVRR and PAS would each rehab its portion of the Holyoke interchange.

In the 5 September 2008 response of NS and ST to the PVRR comment, the applicants wrote that PVRR and NS reached an understanding ‘memorialized in a letter dated August 20, 2008 from Norfolk Southern and PARI to Pinsky [the owner of PVRR].’ The letter reads in part:

PVRR is one of the country's oldest short lines, but its innovative solutions for customers earned PVRR a 2007 ASLRRRA marketing award. Its service to customers, and its commodity and geographic reach, make it a natural partner with Pan Am Southern (PAS). Norfolk Southern, Pan Am Railways, and Pioneer Valley have reviewed the business opportunities, and have concluded that the opportunity to grow rail traffic between Pan Am, Norfolk Southern and Pioneer Valley is greatly improved by the creation of Pan Am Southern, as proposed in STB Finance Docket 35147.

To realize this potential, PAS and PVRR agree to jointly improve the connections between their two systems. Currently, the existing interchange between Pan Am and Pioneer Valley at Holyoke, MA is not operational, and no rail traffic moves through the interchange.

Within six months following approval of the PAS transaction by the Surface Transportation Board and negotiation

EXHIBIT 16

IN RE DEN-L TRANS, INC.

In re: DEN-L TRANS, INC., Chapter 7, Debtor.

Case No. 09-41613.

United States Bankruptcy Court, D. Massachusetts.

January 11, 2010.

MEMORANDUM OF DECISION ON MOTION BY BROKER RICHARD A. SEDER TO ALLOW BUSINESS BROKER FEE

JOEL B. ROSENTHAL, Bankruptcy Judge

This matter came before the Court for a non-evidentiary hearing on the Motion by Broker Richard A. Seder to Allow Business Broker Fee [# 90] (the "Fee Application"), the objections by Imperial Capital Bank² [# 94], and the Chapter 7 Trustee [# 97]. Seder filed a reply [# 98] to which his affidavit ("Seder Affidavit II") was appended; at the hearing the Chapter 7 Trustee filed copies of various emails [# 101]. At the hearing the Court asked each party whether an evidentiary hearing was needed or requested; each declined the invitation and represented that the facts were not in dispute. The Court understands that to mean that, although the averments in the various pleadings except the Seder Affidavit are not evidence, the parties did not generally dispute their accuracy. Thus the facts are drawn from the pleadings and representations of counsel made at oral argument with some inconsistencies noted as appropriate.

FACTS

On July 20, 2009, approximately three months after the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code, the Court directed the appointment of a Chapter 11 trustee. David Nickless was appointed and approximately one month later sought the appointment of Richard A. Seder as a "business broker." The Motion for Authority to Employ Business Broker [# 49] (the "Motion to Employ") is rather sparse in its description of the services to be rendered by Seder and states in relevant part:

3. The Debtor is engaged in the business of "trans-shipping" plastic powder and pellets and is the owner of real estate located at 41 Main Street, Oxford, MA comprised of approximately 8.12 acres and improved with a pre-fabricated steel frame building (hereinafter the Real Estate).

4. Your Trustee wishes to employ Richard A. Seder and Seder Advisory Services, 57 Oak Hill Road, Worcester, MA 01609 to sell the company assets.

6. Compensation for said Business Broker will be 6% but only if successful in selling the company assets.

Seder's affidavit in support of his employment ("Seder Affidavit I") states he had no connections with the debtor, creditors, or other parties in interest. The Motion to Employ was allowed without objection on September 8, 2009. On September 28, 2009 the Trustee filed an Expedited Motion to Employ Francis J. Trapasso as Auctioneer [# 56] (the "Auctioneer Motion"). In the Auctioneer Motion the Trustee represented that:

5. The Trustee has been negotiating with a trucking company for the sale of some of the assets of the Debtor and the lease or purchase of the real estate owned by the Debtor. As of this writing, the negotiations have not resulted in any definitive agreement.

6. Your trustee wishes to employ Francis J. Trapasso of Francis J. Trapasso & Associates to auction some or all of the assets of the Debtor. Sale of the real estate would be subject to a reserve set by mutual agreement between the Trustee and Imperial.

7. Expedited determination is requested as the Trustee has committed to conduct an auction by the end of October and the auctioneer has indicated that October 29, 2009 is an available date.

The certificate of service does not indicate the Auctioneer Motion was served on either

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Supporting Document to Petition
Dana Involvement at the Maple Avenue Facility

Imperial opposes paying any amount to Seder because it argues he was not engaged to sell the real estate and cites *In re Pollack*, 22 B.R. 673, 676 (Bankr. D. Mass. 1982), for the proposition that a bankruptcy trustee cannot "seek to retain a broker to sell real estate that is subject to the secured claim and lien without being specific as to the disposition or potential disposition of such real estate asset." At oral argument Imperial's counsel stated that "the Trustee confirmed with me that the motion to employ the broker was only with respect to the debtor's business—the business assets." At oral argument Imperial's counsel argued that the broker was actually working for Dana Transport and it was Dana Transport which benefitted from Seder's services. Additionally Imperial argues Seder was not successful in bringing the sale to fruition and that payment of a commission to him would violate the terms of the sale order which provided only for deductions for the fees and expenses of the auctioneer and the Trustee and for unpaid real estate taxes. Imperial argues that Seder fares no better under Massachusetts law because his services were not the "efficient or effective means of bringing about the sale" and in light of the engagement's requirement that he be "successful in selling the company's assets" Massachusetts law cannot supplant the terms of an express agreement as this Court noted in its decision in *In re Weston Nurseries*, 2008 WL 1733362 (Bankr. D. Mass. April 14, 2008).

The Trustee responded to Seder's fee request by noting that when he first communicated with Seder, shortly after the Trustee's appointment, the Trustee informed Seder "what Seder would be required to do if he were to be employed as a business broker." The Trustee's response, however, does not provide any further specifics of what the Trustee told Seder his role would be. At the hearing the Trustee reiterated that pursuant to the Motion to Employ Seder, Seder was employed as a "business broker, not a real estate broker, and not an asset broker...." Although not denying, and in fact confirming that Seder expended considerable energy in attempting to put a deal together, the Trustee denies that Seder was successful in obtaining an offer for the sale of the business. Moreover, at the hearing the Trustee noted that there was no equity in the real estate and that Imperial was still had a claim of approximately \$1.2 Million to \$1.3 Million.

DISCUSSION

Unlike *Weston Nurseries*, where the Court had a copy of the contract, namely the Exclusive Sales Agency Contract which governed the conditions under which the broker would receive a sales commission, the Court has not been provided with any document or documents that describe the terms of the broker's engagement beyond the bare bones recitations in the Motion to Employ. Thus the first issue is what are the "company assets" which, according to the Motion to Employ, Seder was engaged to sell. The answer seems to be that any asset owned by the company, whether real or personal, is included. Although Imperial and the Trustee may have had a discussion that only non-real-estate assets were to be covered by the broker's engagement, there is nothing before the Court to indicate such a limitation was intended. Nor is there anything in the Motion to Employ to indicate that the company had to be sold as a going concern in order for Seder to receive a commission for selling the assets.

The Motion to Employ, however, requires that Seder be "successful" in selling the company's assets. Again there is no further guidance as to what constitutes success in this context. Giving the word "successful" its usual meaning, namely that of "accomplishing an aim or purpose," Oxford Dictionary On-Line 2009 Edition, the Court finds that Seder was not successful. He did not succeed in accomplishing the sale; the auctioneer did. Consequently, although apparently there was no broker contract signed by the Trustee and Seder, the terms of the engagement, albeit sparse, are set forth in the Motion to Employ and the Court will not look to Massachusetts law to supplement what the parties agreed would control the engagement.

Supporting Document to Petition
Dana Involvement at the Maple Avenue Facility

Finally, it is not unjust to leave Seder without a commission from the sale. As noted by Imperial but not disclosed by Seder until the Seder Affidavit II,³ Seder had been employed by Dana Transport to assist it in setting up a rail transfer operation in Upton, Massachusetts. The Court is not aware of the terms of that employment nor is it within this Court's jurisdiction to determine whether he is entitled to any compensation from Dana Transport as a result of having brought it to the sale.

CONCLUSION

For the foregoing reasons, the Motion by Broker Richard A. Seder to Allow Business Broker Fee [# 90] is DENIED.

A separate order shall issue.

Footnotes

1. Imperial is now known as City National Bank but the Court will continue to refer to it as "Imperial" in this decision.

Back to Reference

2. Imperial also holds a security interest in real estate of Riverside Real Estate, LLC, an entity affiliated with the Debtor. Riverside is also a debtor in Chapter 11 proceedings before this Court, Chapter 11 Case No. 09-41610. The Trustee also serves as the Chapter 11 trustee in the Riverside case.

Back to Reference

3. In the Seder Affidavit II, Seder stated that prior to August 2009, Dana Transport employed him as an advisor to assist it in setting up a rail transfer operation in Upton, Massachusetts. It was as a result of that employment that Seder arranged the initial meeting with the Trustee. Seder Affidavit II at ¶¶ 2 and 3.

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EXHIBIT 17

EXHIBIT 18

Web Screenshot indicating that the Maple Avenue Facility is a Dana transloading facility

(Below) G&U completes track work to Dana's new Transloading Yard. This historic event also coincided with the grand opening of Dana's new 22-acre transloading facility.

INDUSTRY NEWS

Grafton & Upton Railroad Completes track work to Dana's new Transloading Yard

December 31, 2009

In March of 2008, Jon Dalli Friscoli bought the Grafton & Upton Railroad with hopes of reviving the line. Less than a year and a half later, his dreams have become a reality. For the first time in over five years, an engine made its way down the line to Upton. This historic event also coincided with the grand opening of Dana's new 22-acre transloading facility. For more complete coverage of the event, please read [here](#).

COMPANY HISTORY

FACILITIES

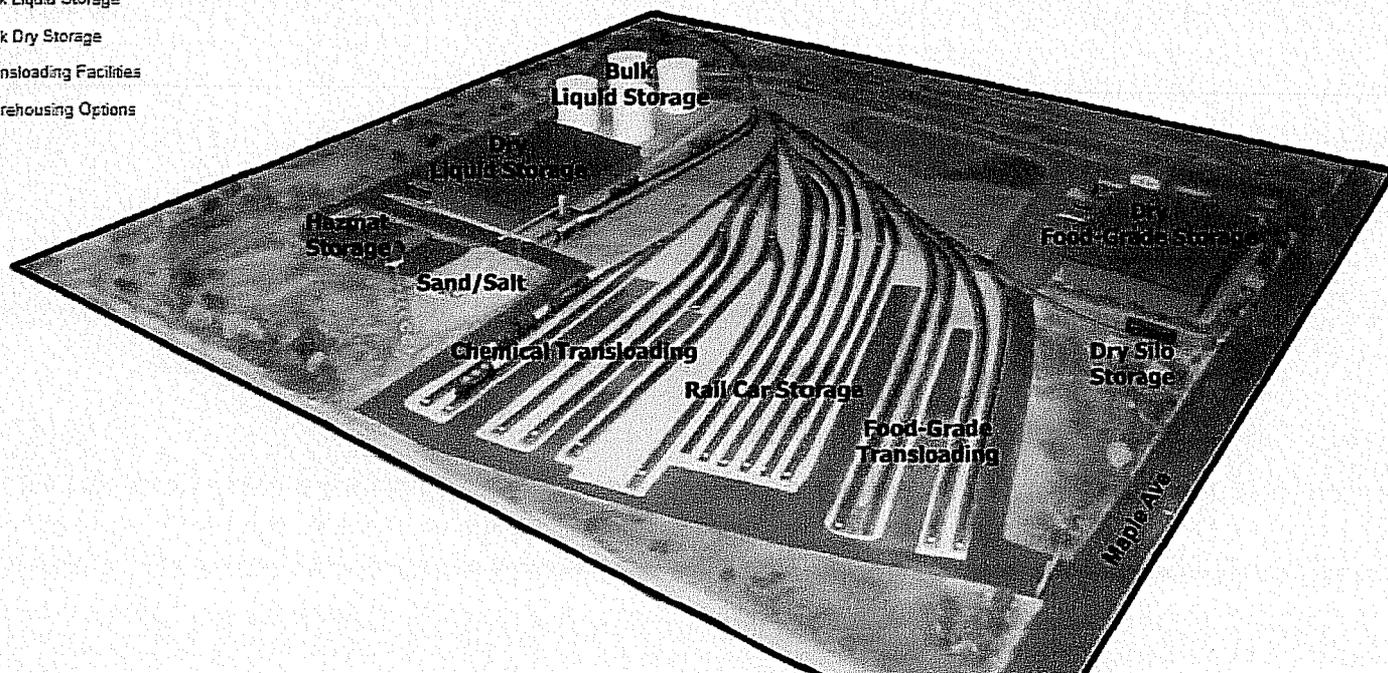
FACILITIES

West Upton, MA

The West Upton, MA transloading facility has been designed to suit all your transportation and warehousing needs. Consisting of two distinct sectors, hazardous materials are kept completely isolated from food grade products.

Each sector contains its own:

- ▶ Bulk Liquid Storage
- ▶ Bulk Dry Storage
- ▶ Transloading Facilities
- ▶ Warehousing Options





The MILFORD DAILY NEWS

Railroad owner says part of line is up and running

By Krista Perry/Daily News staff

Milford Daily News

Posted Feb 03, 2010 @ 12:59 AM

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UPTON — Grafton & Upton Railroad owner Jon Delli Priscoli told selectmen last night a portion of the 16-mile rail line is up and running.

Selectmen had asked Delli Priscoli to give them a progress report and present any future concepts for the rail yard in West Upton.

The portion of the railroad that is functioning runs from North Grafton to West Upton, and though trains aren't running regularly yet, they are going through sporadically, Delli Priscoli said.

"Major track rehabilitation there has been done, there's been a lot of money invested into this by me personally," he said. "On Dec. 31, the first locomotive came through. A tremendous amount of work has gone into the West Upton site."

The site, on Maple Avenue, also has an old landfill which Delli Priscoli is paying to cap.

A business producing and transporting wood pellets is using the West Upton site. Raw material comes into the yard on the trains, Delli Priscoli said, where they are then treated, bagged and taken to businesses like Costco, Lowe's and Home Depot.

"It's about job creation and building expansion," said Delli Priscoli. "This will bring economic growth to the Blackstone Valley."

Several local people are already working for the railroad, he told selectmen.

"I'm very proud of the guys, the railroad has come so far after the years of neglect," he said.

Delli Priscoli said he has done his best to be a good neighbor, and built a buffer of shrubs between the railroad and the homes closest to the tracks.

"It wasn't required but I did it as a nice gesture," he said. "The site is really tidy compared to what it was. It's really phenomenal."

The Upton portion of the railroad will link with the Hopedale stretch in the spring, Delli Priscoli said. The Milford portion could tie into the rest of the line by Christmas, he said.

Delli Priscoli said he urges people to stay away from train tracks and rail yard. Even though the trains only go about 10 mph, the site could be dangerous, he said.

"No snowmobiling, no dog walking," he said.

Selectman Robert Fleming thanked Delli Priscoli for the update.

"Communication is key," he said. "Keeping the town updated is so important and very beneficial."

Delli Priscoli said he would be willing to give updates every few months.

"I think it's a good project, I believe in it," said Delli Priscoli.

In other business, Bill McCormick of the Upton Men's Club told selectmen his organization is working with the Local Community Housing Partnership Committee to acquire a piece of land to use for Habitat for Humanity.

Community Preservation Committee Chairwoman Rena Richard said about \$300,000 from the Community Preservation Act funds would be available to purchase the land and then the town would turn it over to Habitat for Humanity.

McCormick said he is gathering information about the process and has spoken with a bank and churches to determine their willingness to help. Michael Fitzpatrick, Superintendent-Director of Blackstone Valley Regional Vocational Technical High School, said students at the school would bring their trades to the table to help the cause, building a house for a low-income family.

McCormick said he will continue to gauge interest in the community and determine who will take on leadership roles in the project.

"People are coming forward with a lot of ideas," he said.

Fleming said a Habitat for Humanity project would be a great asset to Upton.

"It would be great if we could find a family who used to live in Upton but just can't afford to do it anymore," he said.

Krista Perry can be reached at kperry@cnc.com or 508-634-7546.

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Comments (14)

RJRJ

3 years ago

Report Abuse

You must be logged in to report abuse.

EXHIBIT 20

TO: Blythe Robinson, Town Manager
 FROM: Patrick Roche, Inspector of Buildings
 SUBJECT: Grafton & Upton Railroad
 DATE: 7/21/11

Following is a synopsis of the Code Enforcement Department's involvement with the Grafton & Upton Railroad to the present date.

5/7/09 Letter of violation sent to the Upton Development Group relative to complaints received around odor emanating from utility poles being stored on the property as well as airborne dust, dirt & silt.

5/13/09 Letter received from the Planning Board requesting follow-up to cease all activities at the Maple Avenue former transfer station site until the following issues were resolved: Odor; Determination of Impact on the Town Wellfields; Special Permit Obtained. (Involvement at this time by the Board of Health & Conservation Commission as well,)

5/26/09 Letter of response sent to the Planning Board

5/27/09 Letter received from Jon Delli Priscoli addressing the issues in question.

5/29/09 Acknowledgement letter sent to Mr. Delli Priscoli and the granting of an additional thirty (30) days until 6/29/09 to correct the problems.

6/15/09 Copied on a letter sent to Jim Bates by Diana DelGrosso.

6/24/09 Letter received from Mr. Delli Priscoli outlining the steps being taken to address the poles as well as a copy of a letter he had sent to Cox Industries.

7/09 Poles removed from property.

4/10 Construction activity was noted and inquiries made of Kevin Lobisser of the Upton Development Group.

An application was subsequently submitted for an accessory building adding 3,000 s.f. to an existing building as well as four (4) storage towers for wood pellets.

Plans were reviewed and sprinkler plans were requested as they had not been provided.

5/18/10 Pat Roche questions whether it is appropriate for the Railroad to be offloading wood pellets from railcars to storage silos and repacking into smaller containers to then be loaded onto trucks & shipped.

Town Counsel responded "depending on the zoning district where the activity is located, the activity may not be allowed, unless it is exempt because it is within the scope of "transportation by rail carrier." If the activities being performed here are "packaging" and are not being performed by the rail carrier, the necessary link may be broken and the activities may not be protected. Questions needing to be answered would be: What entity is performing the work; What exactly is that entity doing; what zoning district is the activity located in?

6/3/10 Subsequently a response was received from Mr. Delli Priscoli in response. To quote: G & U is performing, either directly or by contractors working for and under the supervision of the G & U, the rail service, the unloading of the railcars, the transferring of the pellets to the silos, the storage of the pellets, the transferring of the pellets to bags and the dispatching of the trucks for final delivery. We believe this is classic rail transloading operation."

6/11/10 Letter of response was sent indicating that this did, indeed, seem to be appropriate. However, we remain in need in sprinkler plans as requested.

7/15/10 Sprinkler plans were received by Code as well as Fire Department.

8/6/10 Sprinkler plans being reviewed by the Fire Academy.

8/9/10 Concerns were expressed by the Fire Marshal's office that no dust collection system was shown. If dust ducts are installed they may need to be sprinklered as well.

8/30/10 Mr. Delli Priscoli alleges he paid for permit. Permit has not been paid for, has not been issued, still awaiting determination on sprinkler plans. Fire Marshal's office has not had their questions answered.

11/10 Issues raised by Wiring & Plumbing Inspectors relative to the lack of permits being issued. Once again the opinion of Town Counsel was sought and the following opinion rendered: "...the Railroad is required to notify the municipality when it undertakes those activities which would otherwise require a permit, and the municipality can take enforcement action for lack of code compliance, in my opinion. In other words, the Railroad is exempt from initial permitting but not from code compliance."

12/16/10 A letter was received from Stan Gordon of the G & U Railroad asserting that in accordance with MGL Chapter 141, Section 7, the G & U Railroad is "not required to undertake electrical inspections required under MGL Chapter 141." Also that "all of the electrical installation(s) by licensed electricians in accordance with and in compliance with all applicable codes and requirements ..."

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6/9/11 Sprinkler plans delivered to Blythe Robinson by Mr. Delli Priscoli.

6/19/11 Numerous complaints received by this Department relative to noise on a Sunday – all day.

6/20/11 On this date a joint inspection was conducted by the Inspector of Buildings, Patrick Roche and Aaron Goodale, Fire Chief for the purpose of evaluating potential problems with sprinklers and fire service.

To date (7/21/11) no call for a reinspection has been received.

Additionally, the Fire Chief expressed concerns with respect to the electrical room not being sprinklered. Of note is the fact that no request has ever been made for an electrical inspection. (See note from Stan Gordon of 12/16/10).

6/21/11 Communication received from Chief Bradley requesting information from zoning bylaws regarding possible restrictions or limitations on noise.

Response sent along with the applicable bylaw.

Complaints received via email forwarded to Blythe Robinson.

7/7/11 Notice received from the Planning Board regarding meeting on 7/26/11.