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September 4, 2012



Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, S.W.  
Washington, DC 20024

**Re: STB Finance Docket No. 35239-Allegheny Valley Railroad Company  
Petition for Declaratory Order-The Buncher Company, Respondent**

Dear Ms. Brown:

We represent The Buncher Company ("Buncher") in connection with the above-referenced matter which is pending decision by the Surface Transportation Board ("STB"). We are writing to address the status of this matter and correct a possible misapprehension the Board may have about discussions between the parties.

The status of the matter is that it was commenced by Allegheny Valley Railroad ("AVRR") more than 3 years ago, in April 2009. The proceeding involves the status or abandonment of an easement for a short section of a single rail line. After final submissions by both parties, the ruling of the STB was issued in 2010 and, thereafter, appealed to the United States Court of Appeals for the District of Columbia Circuit. At the request of the STB, and with the consent of AVRR and Buncher, the Court of Appeals remanded the matter in January 2011 for the STB to render a further decision based on its review of a limited number of additional documentary exhibits. The parties' submissions to the STB on remand were completed by May 2011 --- 15 months ago --- and the matter has been pending decision since then.

For several years, Buncher has been working with the City of Pittsburgh, its planning agencies and other governmental bodies to redevelop a portion of an area known as the Strip District of Pittsburgh, an infinitesimal part of which includes the area where AVRR asserts a railroad easement. In a number of instances, when Buncher has requested review or approval of a development-related matter from an agency or governmental body, AVRR has publicized its dispute with Buncher in a manner calculated to delay or defer approvals required for various parts of the redevelopment project. As one example, attached is a copy of a letter dated June 28,

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2012 sent by AVRR's counsel bringing the pending STB matter to the attention of the City of Pittsburgh Department of Planning and requesting that they defer any action until the STB has rendered its final determination. As another example, Buncher's request to the Federal Highway Administration for permission to allow a portion of a road in its development to pass under a highway bridge has been delayed. Indeed, the STB itself has been kept apprised of AVRR's public relations battle through regular, unsolicited correspondence that AVRR has sent to the STB. [See, for example, AVRR's recent letters to the STB dated June 28 and July 17, 2012].

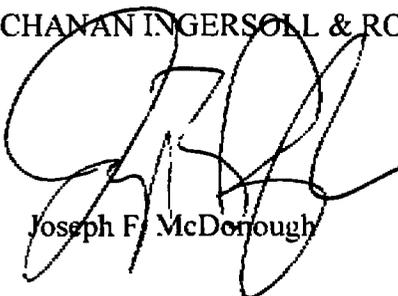
Buncher, of course, believes that it is correct in the position it has taken before the STB and is prepared for a decision by the Board. Our reason for writing is out of a concern that the STB may have been left with the impression by AVRR that settlement discussions are occurring and/or that there may be reason to defer a decision. Buncher wants the STB to know that it has neither invited nor received any contact at all from AVRR with regard to settlement, no discussions regarding settlement are taking place and Buncher has no reason to engage in any settlement discussions. Our interest is in making sure that the STB does not refrain from deciding this matter, which has been fully briefed for 15 months, based on what would be an incorrect perception of the situation and circumstances.

Your attention to this matter is greatly appreciated.

Very truly yours,

BUCHANAN INGERSOLL & ROONEY PC

By:



Joseph F. McDonough

JFM/sam

cc Richard R. Wilson, Esquire

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June 28, 2012

Susan Tymoczko, Zoning Administrator  
City of Pittsburgh  
Department of City Planning  
200 Ross Street  
Pittsburgh, PA 15219

Re: Zoning Change Petition No. 758, LUC File No. C-755, SP – Specially Planned  
District, No. 8 River Front Landing

Dear Ms. Tymoczko:

This letter is in response to your letter of May 22, 2012 and as a follow up to the June 12, 2012 hearing conducted in connection with the above proposed zoning change petition. The property proposed by the Buncher Company for this zoning change is the subject of litigation before the Surface Transportation Board ("STB") in STB Finance Docket No. 35239 – Allegheny Valley Railroad Company – Petition for Declaratory Order. Under 49 U.S.C. §10501(b), the STB exercises exclusive jurisdiction over common carrier railroad rights of way including the Allegheny Valley Railroad Company's permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street which approximately bisects the Buncher parcel between those streets. The STB has exercised its plenary jurisdiction with regard to this rail facility to determine whether or not this permanent rail easement remains subject to STB jurisdiction. By decision dated June 11, 2010, (copy attached) the STB determined that Allegheny Valley Railroad Company's permanent rail easement had not been abandoned and remained subject to STB jurisdiction. That determination remains the decision of the Surface Transportation Board pending consideration of further evidentiary submissions which are currently before the Board.

Accordingly, the purpose of this letter to put the City of Pittsburgh on formal notice that any zoning changes proposed by the Buncher Company and to be considered by the City with respect to Allegheny Valley Railroad Company's permanent rail easement between 16<sup>th</sup> and 21<sup>st</sup> Street may not preclude or interfere with the use of its permanent rail easement for common carrier railroad purposes. Moreover, the zoning authority of the City of Pittsburgh is preempted with respect to the Allegheny Valley Railroad Company's permanent rail easement pursuant to 49 U.S.C. §10501(b).

Susan Tymoczko, Zoning Administrator  
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Allegheny Valley Railroad Company believes that the prudent course of action would be to defer any further action on the proposed zoning change until the STB has rendered its final determination in this matter and the parties have exhausted their rights of judicial review. Were this zoning application to proceed in a manner that would require the railroad to protect its property interests, it may become necessary to subject this property to a lis pendens.

If you have any further questions in connection with this matter, Allegheny Valley Railroad Company would be happy to meet with Department of Planning representatives to provide them with any additional information they may require.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.  
Attorney for Allegheny Valley Railroad Company

RRW/bab  
Enclosure

xc: Luke Ravenstahl, Mayor, City of Pittsburgh  
Noor Ismaial, Director, Department of City Planning  
Pittsburgh City Clerk  
Pittsburgh City Counsel  
Pittsburgh Planning Commission  
Pittsburgh City Solicitor  
Urban Redevelopment Authority  
Allegheny Valley Railroad Company