



KAPLAN KIRSCH ROCKWELL

June 29, 2016

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

ENTERED
Office of Proceedings
June 29, 2016
Part of
Public Record

Re: *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. –
Verified Petition for a Declaratory Order*, Finance Docket No. 35991

Dear Ms. Brown:

I am enclosing for filing in the above-captioned proceeding the Reply to Appeal of Interested Parties to Decision Granting a Protective Order of the Atlanta Development Authority and Atlanta Beltline, Inc.

Please do not hesitate to contact me if you have any questions. Thank you very much for your assistance in this matter.

Sincerely,

Allison I. Fultz

Counsel for The Atlanta Development Authority and Atlanta BeltLine, Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**REPLY TO APPEAL OF INTERESTED PARTIES TO DECISION GRANTING A
PROTECTIVE ORDER**

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BeltLine, Inc.

Dated: June 29, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**REPLY TO APPEAL OF INTERESTED PARTIES TO DECISION GRANTING A
PROTECTIVE ORDER**

The Atlanta Development Authority, d/b/a Invest Atlanta (the “Authority”), and Atlanta BeltLine, Inc. (“ABI”) (collectively, “Petitioners”), submit this Reply in accordance with 49 C.F.R. § 1104.13 to the Appeal filed in this matter by the Flagler Owners requesting that this Board rescind the Protective Order it issued on June 15, 2016.¹

The dilemmas the Flagler Owners describe in their Motion to Rescind Protective Order can be resolved with no need for action by this Board.

The Flagler Owners argue that (a) the public interest was harmed by the Board’s failure to serve the Flagler Owners’ counsel with a copy of the Decision this Board issued on June 8, 2016, directing Petitioners to submit copies of the documents memorializing the transfer of the Atlanta BeltLine northeast corridor (Motion to Rescind Protective Order at 7-8) and that (b) the public interest demands the disclosure of highly confidential terms of those transactions (Motion to Rescind Protective Order at 5-7).

¹ Although the cover sheet of the Flagler Owners’ pleading bears the title “Response of Interested Parties in Opposition to Verified Petition for a Declaratory Order and Request for Expedited Consideration,” the second page of the document is entitled “Appeal of the Decision Granting a Protective Order,” which more specifically describes the substance of the pleading. Petitioners are submitting this Reply to the Appeal, and are therefore not seeking leave to file a reply to a reply.

Taking the Flagler Owners' second issue first, all of the terms and conditions of those transactions material to this Board's evaluation were submitted into the public record of this proceeding in the public version of Petitioners' Supplement in Response to STB Order, filed on June 15, 2016 (Petitioners' Supplement), and are therefore fully available to anyone accessing this docket on the STB website (www.stb.dot.gov). A cursory review of the publicly available transaction documents will reveal that very little material has been redacted (Petitioners' Supplement at Exhibits A and B). Furthermore, any person wishing to review the extremely limited commercially sensitive information that was redacted from Petitioners' public submission need simply execute the Highly Confidential Undertaking attached as Exhibit B to the Protective Order the Board issued on June 15, 2016, and provide it to Petitioners' counsel in order to receive copies of unredacted documents.

As to any harm alleged by the Board's failure to serve documents on the Flagler Owners' counsel, the Board publicly posts on the STB website all of its decisions and all filings in each proceeding. Participants to a legal action are generally charged with the responsibility to monitor developments in the docket. *See, e.g., Witty v. Dukakis*, 3 F.3d 517, 520 (1st Cir. 1993) (“[P]arties to an ongoing case have an independent obligation to monitor all developments in the case and cannot rely on the clerk's office to do their homework for them.”); *Yeschick v. Mineta*, 675 F.3d 622, 629 (6th Cir. 2012) (“[P]arties have an affirmative duty to monitor the dockets to keep apprised of the entry of orders that they may wish to appeal.”); *United States ex rel. McAllan v. City of New York*, 248 F.3d 48, 53 (2d Cir. 2001) (per curiam) (same). Accordingly, any harm the Flagler Owners may allege due to a mis-spelled e-mail address for one of the Flagler Owners' counsel, a mistake the Flagler Owners admit has since been corrected (Motion to Rescind Protective Order at 7) is therefore immaterial and non-prejudicial because Flagler

Owners have had access to the STB website at all times.

The Flagler Owners are silent as to whether they received service from the Board via First Class Mail, the Board's standard method of delivery of STB decisions. Flagler Owners readily acknowledge that Petitioners' counsel served them with all submissions by Petitioners, and that Flagler Owners were therefore placed on actual notice of this Board's direction and Petitioners' responsive filings.

For the reasons set forth above, Petitioners see no reason this Board should withdraw the Protective Order, since all relevant transaction terms and conditions have been publicly disclosed, and any person wishing to view Highly Confidential material may do so upon executing and delivering the appropriate Undertaking. Petitioners have submitted all documents requested by this Board into the record and respectfully request that the STB render its decision in this proceeding.

Respectfully submitted,



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Dated: June 29, 2016

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35991

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2016, I have caused a copy of the foregoing Reply of The Atlanta Development Authority and Atlanta Beltline, Inc., to Appeal of Interested Parties to Decision Granting a Protective Order to be served upon the following individuals via first class mail, postage prepaid:

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