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RECEIVED
JUL 9 2012
MANAGEMENT
STB

Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

June 28, 2012

232537

ENTERED
Office of Proceedings
July 9, 2012
Part of
Public Record

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

Re: STB Finance Docket No. 35239 – Allegheny Valley Railroad Company –
Petition for Declaratory Order

Dear Ms. Brown:

The purpose of this letter is to bring to your attention a Notice received by Allegheny Valley Railroad Company (“AVR”) on May 22, 2012 regarding a Petition by the Buncher Company seeking a change in the zoning classification between 16th and 21st Street in the Pittsburgh Strip District which is the subject of litigation in the above captioned proceeding. In addition, Buncher has also sought approval for a Preliminary Land Development Plan for the construction of a mixed use development within the zone change area. Attached to this letter is a copy of the May 22, 2012 Notice received by AVR from the City of Pittsburgh Department of City Planning.

On June 26, 2012, AVR formally advised the City of Pittsburgh Department of City Planning of the pending litigation before the Board in Finance Docket No. 35239. (Copy attached). Notwithstanding the fact that the City of Pittsburgh had been included as a party of record in that Finance Docket, both the Buncher Company and the City of Pittsburgh seem intent on ignoring the Board’s pending proceeding in this docket.

Should the actions of the Buncher Company or the City of Pittsburgh result in any restriction or interference with AVR’s rights to use its permanent rail easement between 16th and 21st for railroad purposes, it may be necessary to seek further relief from the Board with respect to these activities.

Ms. Cynthia T. Brown, Chief
Section of Administration
June 28, 2012
Page 2

Thank you for your attention to this matter.

Very truly yours,

RICHARD R. WILSON, P.C.

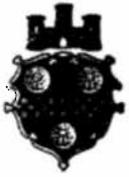
A handwritten signature in black ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

RRW/bab

xc: Allegheny Valley Railroad Company
Edward Fishman, Esq.



May 22, 2012

Dear Resident:

Enclosed with this letter is the description regarding:

Re: Zone Change Petition No. 758 LUC File No. C-755 SP - 8, Specially Planned District
No. 8, Riverfront Landing

which have been filed for property in your vicinity. These applications are presently being considered by the Pittsburgh City Planning Commission which will be taking action in the near future.

This application has been filed by The Buncher Company, property owner, to rezone approximately 37 acres of property roughly bounded by the Veterans Bridge, the Allegheny River, 21st Street and Smallman Street; from UI, Urban Industrial District and GT-C, Golden Triangle Sub-District C to SP - 8, Riverfront Landing; and also for approval of a Preliminary Land Development Plan for the construction of a mixed use development within in the zone change area. It is also a request for recommendation of approval of proposed new Zoning Code text to govern the SP-8 district.

Under the Zoning Code all future development within a SP district must be in accord with an approved Preliminary Land Development Plan and Final Land Development Plan. Any plans submitted as part of this application are on file in the Land Use Control Office at 200 Ross Street, 3rd Floor. They may be examined between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday.

The Planning Commission is interested in obtaining the opinion of residents concerned with this matter. A response form is enclosed for your convenience, and we urge you to respond. A public hearing has been scheduled before the Planning Commission on **Tuesday, June 12, 2012 at 2:00 p.m.** on the 1st floor of the John P. Robins Civic Building, 200 Ross Street. Your attendance and testimony will be appreciated. It will ultimately be the decision of City Council and the Mayor after a recommendation by the Planning Commission whether to change the zoning category and approve the preliminary plan. If such change does take place, the applicant will then have to submit a final plan for approval by the Planning Commission before a building permit can be issued.

Testimony presented by individuals and by a spokesperson representing an organization or a group of people will be limited to **THREE MINUTES EACH**; and, in addition, any person who intends to testify in behalf of an organization such as a chamber of commerce, community club, etc., shall provide a "Letter of Authorization" from the appropriate duly appointed officers before testifying. Prepared comments, statistics or reports in printed form may be presented to the Commission to support testimony or in lieu of testimony. Testimony should not be read from a prepared statement, but may be generalized or summarized as testimony with the prepared statement handed to the Commission for their review. You may call [412] 255-2471 if additional information is necessary.

Sincerely,

Susan Tymoczko, Zoning Administrator

Enclosures

PPLS

John Cutler [JCutler@mshpc.com]

Sent: Tuesday, June 19, 2012 9:53 AM**To:** R R Wilson [rrwilson@rrwilson.net]; Richard R. Wilson

Dick:

It sounds like we'll be able to get a PLS signoff on the revised Easement Agreement this week. How should we handle the paperwork? Should PPL send you a signed document or signature page so you can file with the STB? If so, which address should PPL use for you?

Sorry my phone message yesterday was not picked up, but it may be just as well. My PPL contact reminded me of the problem we had with getting a PPL verification page together, and I went off on a tangent about dates, worrying about whether a new Easement Agreement dated after the verification date would cause any issues at the STB. In fact, we needed a PPL verification for its separate exemption proceeding as to its acquisition of the line from PennDOT. No PPL verification will be needed for our filing as to the North Star exemption application, Docket 35377. I'll clarify that for PPL, advising them that we just need a signature on the last page of the easement agreement. However, I need to know where the signed document or signature page should be sent. Please advise.

Best,

John M. Cutler, Jr.

McCarthy, Sweeney & Harkaway, P.C.

Suite 700

1825 K Street, N.W.

Washington, DC 20006

Direct Line: (202) 775-2505

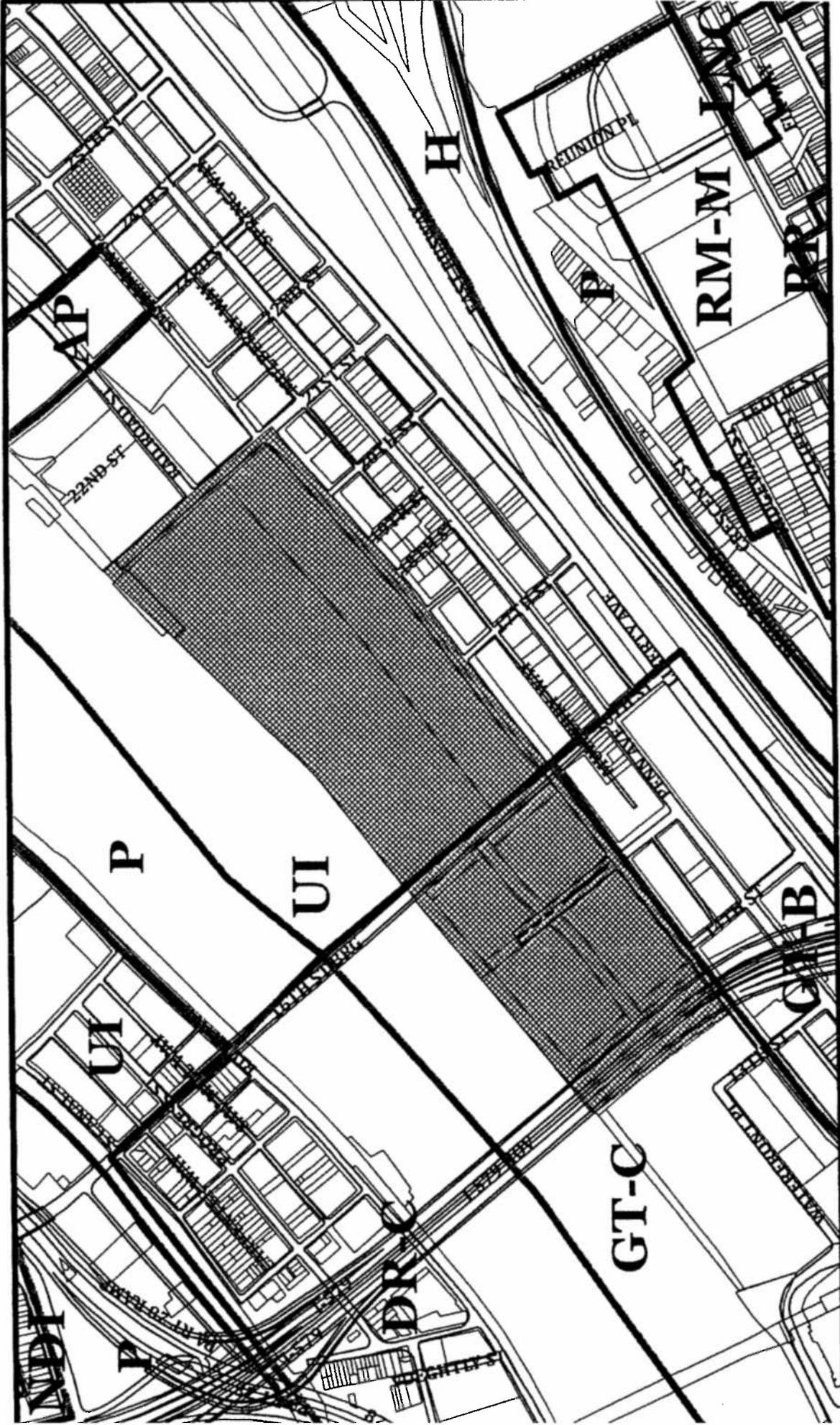
Office Line: (202) 775-5560

Fax: (202) 775-5574

Email: jcutler@mshpc.com

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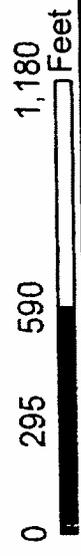
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PROPOSED ZONING CHANGE

 AREA OF PROPOSED ZONE CHANGE:
 FROM: UI - URBAN INDUSTRIAL & GT-C GOLDEN TRIANGLE
 TO: SP-8 SPECIALLY PLANNED DISTRICT 8 (RIVERFRONT LANDING)

DEPARTMENT OF CITY PLANNING
 File No. C-755



2ND WARD
 CITY OF PITTSBURGH
 MAY - 2012

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851 Twelfth Street
Oakmont, PA 15139

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 16th and 21st 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 16th and 21st 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
City of Pittsburgh
June 28, 2012
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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