

BEFORE THE SURFACE TRANSPORTATION BOARD

Washington, D.C.

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION IN

HUDSON COUNTY, NEW JERSEY

AB-167-1189-X

And Related Proceedings

AB-55-686-X

AB-290-306-X

COMMENTS UPON CONRAIL'S SUPPLEMENTAL ENVIRONMENTAL

AND HISTORIC REPORT AND RELATED FILINGS

by Intervenor LLCs	236834
212 Marin Boulevard, LLC	236835
247 Manila Avenue, LLC	236836
280 Erie Street, LLC	
317 Jersey Avenue, LLC	
354 Cole Street, LLC	
389 Monmouth Street, LLC	
415 Brunswick Street, LLC	
446 Newark Avenue, LLC	

Limited Liability Companies of New Jersey

ENTERED
Office of Proceedings
October 16, 2014
Part of
Public Record

The Intervenor LLCs, as the owners of the underlying fee interests in the Embankment properties, provide this abbreviated comment to Conrail's Supplemental Environmental and Historic Report and related submissions by the City parties.

The only significant conclusion as a result of filings by Conrail, the City of Jersey City, and its allies, is that nothing has happened in the intervening five and one-half years since the original environmental analysis was produced early in 2009. Nothing. There has been no change to any of the properties. There is still no demand

for rail freight service. The City refuses to produce any meaningful proposal for rail service. And this "Expedited Abandonment" proceeding has dragged on for years with neither resolution, nor meaningful progress. The Intervenors have been denied all use of their property.

The City, and Conrail, have directed most of their efforts to arguing claims put forth by the LLCs in the U.S. District Court, but not adjudicated in those proceedings. Those claims are not before the Board for adjudication, nor does the Board have any jurisdiction to resolve claims of fraud, estoppel, or civil rights violations. The U. S. Court of Appeals has specifically stated that the LLCs' claims are preserved. The LLCs will bring those claims in appropriate actions in appropriate judicial forums. Anticipating those claims, the City and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (together, and with Rails to Trails Conservancy, collectively referred to as the "City") have repeatedly accused Conrail of wrongdoing, while assuming a virtuous role as protectors of history and the environment. They express their antipathy toward the LLCs by casting them as "Conrail's chosen developer." The City urges the LLCs' claims of fraud and misrepresentation by Conrail against the LLCs as the controlling reasons to determine whether the Board should grant abandonment authorization for the Harsimus Branch. Yet, at the same time the City accuses the LLCs of being in league with Conrail.

Conrail correctly points out that the City (but not the Preservation Coalition) once opposed historic preservation, and took active steps to remove all traces of rail freight service from its waterfront areas. But Conrail also begins to defend its past

positions that the Harsimus Branch was not a line of rail. In its October 15, 2014 reply to the City's arguments that claims of its misconduct must be unfounded because the LLCs own experts supported Conrail in a prior proceeding, Conrail argues that it was without fault, pointing to the fact that the LLCs later changed their position in the District Court proceedings. That is but a small part of the whole story that neither the City nor Conrail are willing to face in its entirety. How is it possible that the LLCs' position was entirely correct when they initially believed Conrail's position, but became entirely incorrect when they corrected their mistake once they discovered that Conrail had misled them? Even Conrail has been unable to muster any credible argument that its initial position was correct, but it now relies upon that same initial position of the LLCs who now claimed they were duped by Conrail in the sale of the property.

The City's arguments about everyone else's wrongdoing are made in support of its theory of entitlement to the extraordinary relief of voiding the LLCs' deeds. That issue has not been brought before the Board in any proper pleading because such extraordinary relief is neither warranted nor available, and it should certainly not be a component of environmental or historical analysis. What purpose would the Board have to justify such action as voiding deeds? Certainly not the return of rail freight service! The City wants to acquire the property for a park, or so it says, after years of refusing to buy it from Conrail when it was both cheap and available. It may be that its only purpose is to forestall development. The Board is not the proper forum for the resolution of any of this, yet the arguments of the City have become so loud and strident, even accusing the Board and its Office of Environmental Analysis

of not being up to the task of analyzing the City's claims, and urging the Board to punish both Conrail and the LLCs in the process. The Board should have none of this and should promptly extract itself from the quagmire that the City has created. The adjudication of these claims, whatever their merits, or lack of merit, have no bearing on the environmental or historic analysis. For those reasons the LLCs have seen little reason to wade into this dispute, but now must object to any consideration of these issues as being beyond the scope of any proper environmental or historical analysis, and also beyond Board's jurisdiction to adjudicate in these proceedings.

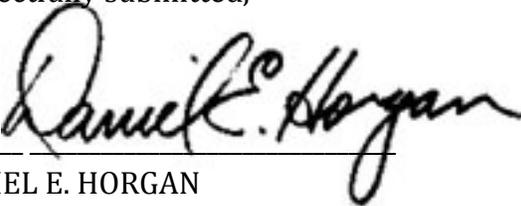
There is also one material misstatement in Conrail's October 15, 2014 submission at page 7 that must be mentioned. That statement is:

The net effect of the parties' stipulation and the Special Court's judgment is that Conrail retains a common carrier obligation over the old Harsimus Branch right of way. For all intents and purposes, Conrail has a constructive easement that cannot be extinguished without abandonment authority from the Board.

What Conrail may have is a common carrier obligation that should be abandoned expeditiously because it no longer serves any legitimate rail freight purpose. But that common carrier obligation is not an interest in the LLCs properties, which Conrail deeded to the LLC's without any reservation for rail purposes. There is no constructive easement and the Special Court did not create one. It only found that Conrail received the property as a line of rail in 1976 subject to the regulation of the Board. What happened thereafter was not adjudicated, and both the City and Conrail strenuously opposed adjudicating those issues at the time, preferring to present them now in piecemeal fashion as self-serving arguments in their own selfish

interests. Those interests may be important in the context of claims to be brought by the LLCs, but they are irrelevant to the present proceedings before the Board and should not be considered. Taking property by government action requires constitutional just compensation. Arguments about voiding deeds and creating implied easements for railroad purposes are being raised because the City is simply unwilling to condemn the property and pay the owners its fair market value, while Conrail is attempting to justify its prior property sales for development purposes.

Respectfully submitted,

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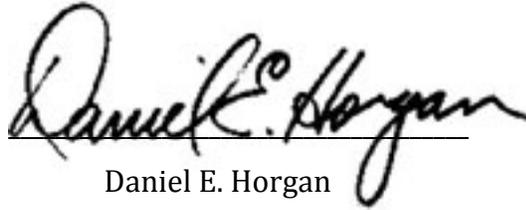
Electronically filed

October 15, 2015

CERTIFICATE OF SERVICE AND FILING

I, Daniel E. Horgan, an attorney-at-law of New Jersey, New York, and the District of Columbia, hereby certify that on October 15, 2014, I filed this document with the U.S. Surface Transportation Board by E-Filing, and that I caused service of these Comments to be made upon all individuals and entities listed in the following Corrected Service List for SDB Docket Number AB-167-1189-X by causing copies thereof to be sent by First Class U.S. Mail.

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DATED: October 15, 2014

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